REAUTHORIZATION OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

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CONTENTS

	Page
Testimony of:	
Furchtgott-Roth, Hon. Harold W., Commissioner, Federal Communications Commission	69
Huber, Peter W., Partner, Kellogg, Huber, Hansen, Todd, and Evans	21
Kennard, Hon. William E., Chairman, Federal Communications Commission	41
Ness, Hon. Susan, Commissioner, Federal Communications Commission	64
Powell, Hon. Michael K., Commissioner, Federal Communications Commission	74
Tristani, Hon. Gloria, Commissioner, Federal Communications Commission	80
Material submitted for the record by:	
Federal Communications Commission, response for the record	115

REAUTHORIZATION OF THE FEDERAL COMMUNICATIONS COMMISSION

WEDNESDAY, MARCH 17, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Deal, Largent, Cubin, Shimkus, Wilson, Pickering, Fossella, Blunt, Ehrlich, Markey, Gordon, Rush, Eshoo, Engel, Wynn, Luther, Sawyer, Green, McCarthy, and Dingell (ex officio).

Staff present: Justin Lilley, majority counsel; Mike O'Reilly, professional staff; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. Please come to order.

Today, the subcommittee begins a process of re-authorizing and, hopefully, reforming the Federal Communications Commission. The Commission has been operating without statutory authority since 1991. It is my hope that this will be the first in a series of public hearings leading to the introduction of a comprehensive FCC reform legislation later this summer.

When Congress passed the historic, much-publicized Telecommunications Act of 1996, I believe we made a fundamental mistake. We failed to reform an outdated, out-of-touch FCC when we overhauled the law. As a result, as America prepares to enter the 21st century, we have in effect a horse-and-buggy agency trying to bridle supersonic technology. And it is simply not working as well as it should.

Simply put, can the agency created in the 1930's, instilled with the regulatory purpose and ingrained with the regulatory mindset, effectively oversee the deregulatory policies engineered by Congress for a modern-day marketplace? I believe the answer is no.

And little wonder why. Keep in mind the FCC is based on the old Interstate Commerce Commission model, dating back to 1888, a time when telegraphs, not telephones, televisions, satellites or computers. In today's marketplace, it is more important for the FCC, literally, to get out of the way rather than to try to lead the way.

To better understand the problem. Consider how the Commission is divided into six operating bureaus: mass media, common car-

riers, wireless telecommunications, compliance and information, international, and cable services.

Twenty years ago, it made sense to have one bureau overseeing a monopoly like Ma Bell. But what about today? Because of cross-pollination in the telecommunications industry, hundreds of companies are involved in telephony, high-speed Internet services, cable television, satellite-cellular, just to name a few.

Suddenly the one-size fits all mentality simply doesn't work anymore. So we need to fundamentally restructure the agency and develop a 21st century model that works in a high-tech global economy. But we must change the FCC's thinking as well. Today, nearly 3 years have passed since we passed the landmark Telecommunications Act. There is still no effective competition in residential telephone markets across America.

We have failed to achieve full competition in the long-distance loop. Why? Is the law flawed? I don't think so. In my opinion, it is the way the law is being interpreted and enforced. Instead of concentrating its efforts in areas where it can play useful roles and make a difference to consumers, FCC in recent years has delved into such controversial areas as free time for politicians, prohibiting liquor advertisement in radio and television, conditioning telecommunications mergers, and, worst of all, the FCC effectively, in my opinion, levied a $2 billion tax on telephone consumers to establish this so-called E-Rate program.

For the first time I have looked, no where in the Constitution is the FCC or any other Federal agency given the power to levy, raise, or collect taxes. While the FCC may call these new charges fees, I believe they are taxes in disguise.

I have other deeper concerns as well. Concurrently, both the Department of Justice and the Federal Trade Commission possess statutory authority to review all mergers and acquisitions for anticompetitiveness. It is troubling to me and many of my colleagues that the FCC has assumed authority to condition mergers based on certain requirements even when these mergers have already passed DOG and FTC scrutiny—DOJ and FTC scrutiny.

Based on this troubling track record, the FCC in the future may find the emerging Internet too tempting to resist, and therefore, I think it is vitally important for Congress to reform the agency from top to bottom.

Simply put, FCC regulation of the Internet could have a paralyzing effect on the American economy, and I think the forbearance exercised by the Commission ought to be codified in law.

Recently, I met with Chairman Bliley and pledged my support to work with him on a sweeping FCC reform bill. Among other things we plan to look at: forbearance, whether, indeed, forbearance can be codified; privatization, whether the FCC activities could or should be privatized, such as record keeping and information gathering; duplication, what FCC programs duplicate those of Federal agencies and could be eliminated; devolution, what FCC functions presently handled in Washington could be handled at the state level, and organization, what FCC structural changes can be made to streamline the agency and make it user friendly in today's competitive, fast-paced marketplace.

As we begin these hearings, Chairman Bliley and I have two major goals in mind. We want to fundamentally restructure the agency, and second, we want to redefine the FCC's mission. We are starting today with a blank piece of paper.

I want to welcome the input of Chairman Kennard and the entire Commission. Let me thank you all in advance. Your statements, which are a part of your record when we begin here today, are excellent starting points I think for this discussion.

Astonishingly, there has been no comprehensive Congressional review of the FCC and its operations since the 1970 Ashe Council report. Back then, there was only one telephone company, two commercial satellite providers, three television networks, and no one, not even Bill Gates in his wildest of dreams, had ever heard of a laptop computer with high-speed Internet access.

Times have changed. Now it is time to change the FCC.

I, of course, did not create the FCC, but I would love to recreate it in this process beginning today.

I will be happy to yield to my friend, Mr. Markey, for an opening statement.

Mr. MARKEY. Thank you, Mr. Chairman, very much. And I want to thank you for calling this hearing today on proposals to reform the Federal Communications Commission. And I want to thank Chairman Kennard as well as Commissioners Ness and Powell and Furchtgott-Roth and Tristani for being with us here today.

The purpose of this hearing is to explore proposals to reform the Commission. I believe that constructive proposals to help the Commission do its job better and more efficiently are always welcome. I want to commend Chairman Kennard and the other Commissioners for the work they have already done to reinvent the Commission so that its functions are, in fact, discharged in a very competent and productive manner.

Before we launch into a discussion about the job the Commission does and any proposals to help the Commission perform its tasks better, I think it is important to remember that the Commission has been entrusted with implementing the Telecommunications Act of 1996, a job that is unparalleled in scope and detail since the enactment of the 1934 act itself.

We must also be cognizant that Americans today have the finest telecommunications system in the world. We are looking over our shoulders at No. 2 and three. It is overall, the most competitive, most diverse, and most innovative telecommunications marketplace on the planet.

We should be very proud of what this committee has done, and we should be very proud of what the Federal Communications Commission has done in our private sector to bring us to this point. This is an American strategy. This is the blueprint which we laid out and has so far surpassed anything else that any other country in the world has even remotely contemplated.

The fact is that this is the case, is, in fact, no small measure due to the fine work of the Federal Communications Commission and its staff. And I want to note that.

But the fact also remains that we are not satisfied with the status quo. Most consumers still lack affordable alternatives to cable TV. Most consumers still lack choices for local phone service.

Can we continue to add choices in the marketplace for the American consumer? Can we continue to foster ever-more ruthless competition and create more jobs?

Yes, we can. And we should.

Will there simultaneously be proposals to collapse the existing choices, either in the name of deregulation, or to concentrate economies of scope and scale?

Yes, there will always be such proposals.

Now that the communications act is finally getting out of its major rulemaking stages and we can get would-be marketplace participants out of the courtrooms—and I deeply regret all of the cases that have been brought by the Bell operating companies against the Telecommunications Act—we finally, 3 years later, have most of them out of the way so that the marketplace can begin to work. I would suggest that reopening the Telecommunications Act or radically restructuring the Commission itself would be counter-productive.

The last thing we should do right now is reverse the course of battling to de-monopolize telecommunications markets and jeopardize or delay deregulation.

After all, we are not going to be able to deregulate until we demonopolize and to break up monopoly barriers to competition. The Commission will need tools and resources, and competitors, both large and small, will need certainty in the marketplace.

That certainty has finally arrived. I hope that this committee and the Congress does not create uncertainty by giving a promise to the monopolizers that they may get relief their need to open up their markets.

Given the fact that there are literally billions of dollars being invested today, with billions more to come, now that the major legal challenges have run their course, the relatively small amount of funding that the FCC represents is pennies on the dollar in terms of the benefits consumers and workers ultimately derive from implementing the bill properly.

To risk delaying emergence of a truly competitive marketplace and the arrival of the consumer choices and jobs it creates would be terribly shortsighted.

I want to applaud the Commission for coming forward today with some suggestions for how to do its job more efficiently and better fulfill the numerous tasks and goals that Congress requires it to achieve.

Common sense, consensus approaches to reform of the FCC are welcome as they are with any government agency. And I look forward to working with Chairman Tauzin in exploring how we can make progress together. And I look forward to working with Chairman Bliley and Mr. Dingell and the other members of the committee as we work with the FCC to ensure the full implementation of the Telecommunications Act so that it successfully works for all of the American people.

On a final note, I would like to point out that our first witness today is a brilliant man. I have no doubt that he is one of the most brilliant men who has ever appeared before the committee. However, there are brilliant people on the other side of all of the issues, which Mr. Huber represents as well. And I would have preferred

that we had two witnesses at least today, rather than one, because as well as Mr. Huber over the years has represented the Bell operating companies' perspective before regulatory agencies and in the courts, there are others who disagree with his perspective in terms of where we are at this point in time.

And I know that Mr. Huber was invited very late to testify, and we had some difficulty in having an alternative point of view presented at this time. But I would like to stipulate for the audience and for the members of our committee that Mr. Huber represents one perspective, but there is another; there are other perspectives, but there is at least one other competing philosophical perspective that is at great odds with Mr. Huber in terms of what needs to be done to open up this marketplace more fully.

And in the future, I would hope those other voices will be given a chance to testify as well. And I thank the chairman for allowing me that extra time.

Mr. TAUZIN. The Chair thanks the gentleman. Let me, before recognizing the vice chairman of the committee, let me point out to my good friend as we have had in private conversations, Mr. Huber is but the first of a number of voices we are going to hear. I think there are more than two perspectives. I think there are quite a few.

And we are going to look for the brightest of minds who can paint pictures for us of where this incredible world is going so that all of us can work in a bipartisan and collegial way to find the right kind of agency for the Federal Government to work cooperatively with communications in our country.

I pledge to my friend my cooperation in that regard, as I did privately. We will have other perspectives today. Mr. Huber I think will present an extraordinary picture for us. And we will have extraordinary pictures painted by people of, hopefully, equal men of capacity as Mr. Huber is, as we go forward.

The Chair is now pleased to recognize the gentleman from Ohio, the vice chairman of the committee, Mr. Oxley, for an opening statement.

Mr. OXLEY. Thank you, Mr. Chairman. I applaud the decision to hold this morning's hearing, and I pledge my support for the committee's effort to re-authorize and reform the Federal Communications Commission. I believe the restructuring and modernization of the FCC is perhaps the most important project that we will undertake in this Congress—indeed, an attic to basement review of the FCC and its structure.

I want to also welcome our witnesses and want to commend the Commissioners, in particular, for their testimony. From their prepared remarks, it is obvious that they have put serious thought into their recommendations. This kind of self-analysis isn't necessarily easy. So I appreciate the fact that we begin this process with some excellent proposals.

And let me throw a few bouquets to the Commissioners.

Chairman Kennard's suggestion that the Commission focus on core functions not addressed by market forces is right on point. Increasing competition means a reduced need for regulation and a golden opportunity to streamline. Regulatory and statutory inertia are our enemies here.

I would like to quote from the Telecom Reports dated March 15 in which, based on Chairman Kennard's testimony, they say: "One of the difficult issues policymakers must grapple with is whether the convergence of new technologies requires the FCC to move away from its current structure, which includes separate bureaus handling common carrier, wireless, cable TV, mass media, and international matters. We are going to put that on the table, the chairman said. We are grappling with this issue of convergence."

Although it theoretically may make sense to break the agency down along functional lines rather than industry sectors, the Chairman goes on to say the FCC is bound by statute to treat industry segments differently. We need to recognize, the Chairman says, to recognize that we are dealing with statutes that haven't really dealt with convergence.

And that is indeed our obligation as writers of law to make certain that that becomes a reality.

Commissioner Powell's points on the duplication of the functions of other governmental agencies within the FCC are, I believe, especially insightful. This is a problem which hasn't received much scrutiny, but the implications are quite significant.

Not only is it inefficient to have redundant regulation, but the replication of other bodies of law in FCC regulations and the creation of mini-regulatory agencies within the Commission invite the gaming of those rules to realize other means.

Commissioner Powell cites the example of the FCC EEO program and points out that the telecommunications firms are already subject to the scrutiny of the EEOC as well as other Federal, state and local civil rights authorities.

Commissioner Ness raises, in my view, one of the most important points of the day when she discusses the need to strengthen the FCC's technical assets and commit more resources to international representation. We provide a powerful benefit to American communication workers and consumers when the U.S. is well-represented in trade and standard-setting venues.

Commissioner Furchtgott-Roth articulates the need for the Commission to make greater use of its regulatory forbearance authority and makes the cased for downsizing the FCC over time. I couldn't agree more.

And Commissioner Tristani's comments on the need for an organizational restructuring that reflects technology and industry convergence are certainly well received, at least from this member.

Let me also take a moment to praise the Commission for a few of the tasks it has executed quite well of late. I believe that your handling of disputes pertaining to CALEA has demonstrated great fairness and an appreciation of the needs of law enforcement.

Congressman Stupak and I wrote the Commission last year on this topic, as you will recall, and I feel our concerns were heard. I hope you will continue to recognize the importance of digital wiretap capability to public safety.

Second, I want to praise the international bureau for some outstanding work. The implementation of the market-opening WTO telecommunications agreement and the Commission's effort to bring international settlement rates more in line with costs are benefiting consumers in the U.S. and around the world.

Last, I want to endorse the Commission's decision not to mandate cable unbundling as a condition of the AT&T-TCI merger or in other contexts. It is my view that unbundling will happen as market forces dictate, and that there is no need for Government to force that issue.

Having said these things, I nonetheless believe that the Commission needs to be refocused. Reorganization of the FCC is an opportunity to make it more efficient and improve its ability to fulfill its mission. We need to repeal obsolete statutes, eliminate outdated regulations, and otherwise clear out the underbrush in the law.

It is my view that the FCC modernization is an attainable goal this Congress, but only, and only, if we stay focused on restructuring and don't get sidetracked in old fights over telecommunications policy. There is no surer way to kill reform than to reopen those old disputes.

Mr. Chairman, we need to stay focused on the regulatory framework of the Commission itself. If we can do that, we can remake the Commission into a model of what an independent agency ought to be, with long-term benefits for all telecommunications sectors and all telecommunications consumers.

Again, Mr. Chairman, thank you. And I yield back.

Mr. TAUZIN. Thank you, my friend. The Chair is now pleased to recognize the ranking minority member of the full committee, the gentleman from Michigan, Mr. Dingell, who I know has some modest views on this subject.

Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. I always have moderate views, as you very well know.

First of all, Mr. Chairman, thank you for recognizing me. I would like to commend you for holding this hearing and encourage you to persevere in your efforts, as you have said, to "re-mission" the FCC. I'm not quite sure what the re-missioning means. As I note, remission is used where cancer is involved, and it would appear that in certain parts of the Commission something of that kind is going on.

So if that is your interpretation, I support it. If you intend also to give them a better appreciation of what it was the Congress intended when we wrote the Telecommunications Act so that they may better and more fairly apply that statute and carry out the intentions of the Congress I actively support you in that undertaking, Mr. Chairman, and commend you.

Just 3 short years ago, many of us trooped back here from the Library of Congress after the President signed the Telecommunications Act into law. At that time, many of us were optimistic that we had succeeded in crafting a good law, one that would provide the telecommunications road map into the 21st century. We were going to allow everyone to get into everybody else's businesses. Let the consumers pick winners and losers through the marketplace.

And we were not going to support any particular part of the marketplace, but we were going to see that competition gave us the best service that we could possibly get for all the American people.

That was then. I would regretfully observe this is now. And it would appear that many of us, especially myself, are extremely

frustrated with the manner in which the FCC has disregarded Congressional intent and implemented the new law.

I will only give a few examples. And there are legions more of these.

The Telecom Act required the Commission to issue new regulations to curb slamming of consumers by long-distance companies. The practice is, of course, one of the principal complaints we hear from consumers. The Commission postponed implementing this requirement for years until members of this committee finally did something about it and until we finally got on the Commission about a period of slothful inactivity on this matter.

The Telecom Act required the Commission to establish a universal service fund to make sure that all Americans would continue to receive affordable basic telephone service, something of enormous importance to residents of inner cities and of enormous importance to people in rural areas, who, without this, will pay excessive and exorbitant costs for telephone service.

The Commission has repeatedly postponed full implementation of that requirement as well. Inexcusable.

As a result, we have now found ourselves having continued hidden subsidies in the system. Plus we have the new universal service charges showing up on consumer bills. That too is a source of many justified consumer complaints, and is of course reason to call the Commission to account.

The act required the Commission to forbear from anything rather than from applying statutory and regulatory requirements that were no longer necessary in light of technological and economic changes. Essentially, we thought that they were big boys and big girls and that they would know how to implement the wishes of the Congress. We are disappointed.

The Commission has ignored this mandate as well.

On the other hand, when you search the law, the legislative history, and all the hearings for any reference to the term operational support systems, or OSS, you can't find a single one. The Commission in a remarkable exercise of imagination run wild, has grounded each of its five decisions denying a Bell company authority to offer long-distance service on the failure of the company to meet OSS requirements.

I don't know what these are. I'm not convinced that the Commission does, but the Commission applies them with enormous diligence.

I would note that there is virtually no increase in competition in long-distance. I would note that there is no competition in service to residential users. However, the FCC has diligently kept competition out of long-distance and has not done anything to stimulate competition with regard to service for the individual householder. A most curious set of circumstances.

I have been regrettably driven to the conclusion that this Commission and the one preceding it have not only disregarded the law but has thumbed its nose at the Congress. The agency is implementing a law they wished that the Congress had drafted instead of the black and white version that the President signed into law.

We are talking here about extension of the life of the Commission. It would appear to me that perhaps the re-authorization

should be for a period of 1 year or less, certainly not more, because we are going to need them before us to talk to us again about the mishandling of the business of the Commission and the derision that they have shown for the intentions of the Congress.

In our government, everybody is accountable to somebody else for his or her actions, a very important Constitutional principle. We here in the Congress are accountable to our constituents. The lower courts are accountable to the higher courts. And, most curiously, the FCC thinks that it is not accountable to the Congress.

I intend to have a few fine questions for the members of the Commission, and I intend an active role as the subcommittee develops its plans for restructuring the agency or, perhaps, remissioning, as you have so wisely observed, Mr. Chairman.

My efforts will be guided by the need for accountability by an agency that I believe is out of control and is not implementing the law. The agency has found that it needs more staff and more money. The agency has, however at the same time, required the filing of thousands and thousands of pages of documents in connection with applications by the Bell companies to enter long-distance. Nothing, however, has been done on any of these except kind promises from the Chairman that at some distant point in the future they would, of course, look with kindness on permitting competition to enter the long-distance service.

I think that we find this whole situation a bit ironic. I would observe that in Monday's Telecommunications Daily, the Chairman of the FCC has kindly warned the Congress that we should not turn these proceedings into a backdoor rewrite of the Telecommunications Act.

There speaks a real expert on the subject of backdoor rewrites of the Telecom Act.

Writing laws is the business of the Congress. Those to whom the Congress delegates the implementation of law should refrain from giving us warnings about what we should or shouldn't do, or the job that the people elected us to do.

Almost all of us who have been in here at this desk have been in public service long before the Chairman of the FCC received a Presidential appointment. And I would remind him that I think I was writing laws when he was wearing three-cornered pants.

I find his choice of words particularly distressing when I consider the Commission's action in implementing the 1996 act. I am sure that Chairman Kennard speaks as a real expert on backdoor rewrites. His comments proved to me, at least, that the chairman knows full well that the Commission's implementation of the act has been inconsistent with the intention of the Congress and, indeed, with the clear language of that statute.

He has gotten away with it so far and does not want us to step in and to spoil his fun. Holding the Commission accountable and correcting its mistakes may require that we do rewrite portions of the act, or it may be possible that in prudence we will decide that we can cut certain portions of his budget so that he no longer needs to require massive piles of paper, so that he and the bureaucrats at the FCC may have a great deal of time running their shredders overtime and acting important by going to meetings to discuss over-large filings that need not be made under the statute.

I see no reason to defer to Mr. Kennard on this point. We should do whatever is necessary to assure that the prohibitive—that the prohibited actions that he is taking, the anti-competitive actions that he is carrying forward, and the deregulatory goals that we have set are, in fact, achieved in a proper way.

I thank you for recognizing me, Mr. Chairman. I yield back the balance of time. I may have some more things that will be less kind to say at a later time in the proceedings.

Thank you.

Mr. TAUZIN. The Chair thanks the gentleman. The gentleman's time is slightly expired. I just want to——

My friend, Mr. Markey, pointed out, Mr. Kennard, we were all wearing three-cornered pants when Mr. Dingell was already legislating.

We deeply respect the dean of the House. The Chair, in order to recognize punctuality, is—follow our procedure of recognizing the most senior member when the proceedings opened, and that is Mrs. Cubin, will be recognized for an opening statement.

Mrs. CUBIN. Thank you, Mr. Chairman. And I gave up complaining for lent. And so what I say is I am not complaining, I am making a simple observation. And I guess that is what the ranking was just doing. Next year I am going to give up smoking. I haven't smoked in 21 years, and I won't be an abject failure at that I am sure.

I do want to thank you for holding this very important hearing on re-authorization of the FCC. My main focus today will be to engage the Commissioners on issues pertaining to the access of telecommunications and technology. I want to assure all Americans that they will be able to experience the benefits of telecommunications and the technological advances that are rapidly being deployed across much of the United States.

And when I say much of the United States, I say that for a reason. My constituents in the State of Wyoming are telling me that they are not experiencing many of the same benefits such as high-speed Internet service, increased telephone competition, and lower rates that many people in other parts of the country are enjoying.

I am sure that the Commissioners would agree that less regulation in these areas, I hope they would agree, less regulation in these areas not more will allow rural areas of the country to partake in what truly should be a revolutionary time in our lives.

I am encouraged by Chairman Kennard's Focus 1999 agenda that points out that growth in advanced services will strain the existing regulatory structure. Furthermore, the FCC should aggressively pursue ways to give these emerging markets the breathing room they need to innovate and prosper. Those are encouraging words to me both for startup businesses and existing telecommunication companies that really are burdened by excessive regulations, stymied by artificial controls, and hampered by a climate that seems to reward restraint instead of encourage progress.

Advancements in technology are truly mind-boggling. Keeping up with these issues in the area of telecommunications, being new on this committee, is totally mind-boggling as well. And trying to keep up is like, my husband said, herding cats. It is virtually impossible to do.

My goal for Wyoming is to make it as friendly as possible for outside businesses to locate there and also to maintain a climate that encourages current businesses to stay in the state. That means, we must work together to develop an environment for businesses to invest capital in an information infrastructure, create good-paying jobs, and provide a better way of life for the citizens of Wyoming.

In considering the re-authorizing of the FCC, Congress must look hard at what is the best for the American people. We must develop a market-driven solution to the events that are happening in this past-paced industry.

To believe that the Federal Government can keep up with industry is totally unrealistic. And that is why this regulatory dinosaur of the 1930's should be updated not only for the next decade but for the next century.

None of us, of course, has a crystal ball. We would be foolish to predict the advancements that are yet to come. We must, however, look to the future as a guide so that we can recreate an agency that rewards progress instead of restraint, condones new ways of thinking instead of creating barriers, and moves at the same speed as the industry that it regulates.

I look forward to hearing from the Commissioners and listening to their ideas on possible reforms. And, again, thank you, Mr. Chairman, for holding this hearing.

Mr. TAUZIN. Thank the gentlelady. The gentleman from Ohio, Mr. Sawyer, is recognized.

Mr. SAWYER. Thank you, Mr. Chairman. Thank you for this hearing. I have a wonderful opening statement. I urge everyone to take it home and read it for all of its nuance in the evening, where you will appreciate it. It may move some of you, but I will forgo reading it at this moment.

[The prepared statement of Hon. Thomas C. Sawyer follows:]

PREPARED STATEMENT OF THOMAS C. SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you Mr. Chairman for holding this hearing this morning. I especially want to thank Chairman Kennard and the four other Commissioners for coming to testify before us today. I know how difficult it is to get all of them together because of the growing demands on their schedules. So, I appreciate their taking the time to come to Capitol Hill.

The jurisdiction of the Federal Communications Commission is quite extensive. The Commission's responsibilities range from regulating interstate telephony service to cable pricing to satellites. Obvious pressures are being placed on the Commission because of its jurisdiction and responsibilities. However, I strongly believe the Commission needs, and fully deserves, the tools and resources necessary to meet its statutory requirements and to do the job it was created to do. Unfortunately, however, the last time the FCC had a statutory authorization was in 1991 and for every year since Congress has had to appropriate funds without an authorization.

Last month commemorated the three-year anniversary of the passage of the Telecommunications Act of 1996. During that debate, many thought that Congress should have revamped the FCC and provided it with a multi-year reauthorization package to meet the demands of deregulating the telecommunications industry. While the reauthorization has not occurred, the Commission has taken on a myriad of issues while attempting to implement the Act. Moreover, the structure of the FCC has essentially remained the same.

Although the FCC has come under some criticism for its actions during this period, I am glad to learn that Chairman Kennard will be outlining his proposal for consolidating bureaus and modernizing the Commission. I believe this is an important step as we move into the next millennium. It is even more important that the

FCC receive the proper authorization and direction from Congress so that its work on the implementation of the Act can properly move forward.

Mr. Chairman, I believe it is important that the dialogue between Congress and the Commission continues to be honest and open because the work that we both do in this new era of telecommunication deregulation is important to the American people and to the world. I hope the Commission sees this opportunity to answer questions that have been raised since the last time we held a Reauthorization hearing.

Again, thank you Mr. Chairman. I look forward to hearing from our witnesses

Mr. TAUZIN. I thank the gentleman. The gentlelady from New Mexico, Mrs. Wilson, is recognized.

Mrs. WILSON. Thank you, Mr. Chairman. You know my problem on this committee is that the Minority Leader just sugar coats everything, and I can never understand exactly where he is coming from. I have that trouble all the time.

I appreciate very much your holding this hearing. I kind of have a little bit different perspective on this and a certain amount of sympathy for those in the FCC. And the reason is that I formerly headed a State government agency that we reorganized, and I know that it is much easier to ask these questions to plan a reorganization than it is to actually reorganize and manage your way through that. So I have some sympathy for the challenges that you face in taking that agency to be more effective.

The questions that we are here to ask and begin to answer today have more to do with how you do your jobs than what you are doing. It is not about policy. It is about management and responding and asking ourselves the questions of how has the mission changed, how has the environment changed, and how do you change your organization in the way in which you do your jobs in order to more effectively serve the customer and achieve the mission that you have been given.

I will be interested in the answers to several questions that have been tossed around in my office, including some from my constituents. And I have a very active telecommunications group in Albuquerque, New Mexico, that has both positive things to say about the FCC and some, I think, very good questions and suggestions about how it can be made even better.

I yield the balance of my time.

Mr. TAUZIN. The Chair thanks the gentlelady. The gentleman from Minnesota, Mr. Luther.

Oh, he is gone. The gentleman from Tennessee, Mr. Gordon.

Mr. Gordon, I'm sorry, the gentlelady from California. I think they said she was next.

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to everyone on the committee and those that are here to testify today.

Over 3 years ago, of course, the Congress passed the Telecommunications Act and we restructured what was almost a century-old, monopolized industry into one based on competition and open access. I think we have yet to see the full benefits of the 1996 act, and I think that we have to keep looking for new and better ways to implement and to be moving in the right direction.

But I think that there are some positive things that are happening. Yesterday, for the first time, the Dow, largely driven by the exploding telecommunications sector of our new economy, climbed over the 10,000 mark.

Soon after the new century, which is just really moments away, it is likely that the number of people using the Internet will climb over and past 100 million. If someone were to have said that just a handful of years ago, would have been laughed out of the room, probably this room.

It is estimated that Americans will spend over $1.5 trillion in electronic commerce in the next 6 years. So I think that there are some very exciting things on the horizon. Obviously, the FCC has to adjust as competition continues to develop and new markets are created in this telecommunications field.

Today, the Chairman of the FCC will present his plan for building a new FCC, and I think the burden really falls on your shoulders and that of the agency to really demonstrate what the word "new" means. If, in fact, it has some cobwebs around it, I suspect that there will be more Dingells around this committee.

So it is up to you to present that plan to us and how you are going to handle the regulatory challenges that confront the telecommunications industry in the 21st century. The plan has to ensure that the explosion of the new technologies really ensure that each and every citizen in this country has access to what I just described. If that is not the case, then we will have all failed.

And there are many challenges, I think, ahead, obviously, for the FCC to ensure that this is the case. I think, and I keep hammering on this, that more work has to be done on improving and expanding our Nation's 911 emergency phone system so that we can locate every caller. If this isn't the case in emergencies, then most of the citizens are going to throw their hands up and say, well what's new and what have you done to make it better for us.

We should be encouraging additional studies of advanced trauma communications and elevating the public understanding of automatic crash notification systems. We should ensure that every student in every classroom in our country continues to have the opportunity to tap into the wealth of what the Internet really represents.

And all of my colleagues know, over $1.6 billion has been sent to school districts throughout the country as part of the E-Rate System. Now this system has been criticized by some members of this committee, but despite that, I think the program is not only an important one but it is proving to be a success, enabling thousands of students across the country, as well as their teachers, to access the great learning tool that the Internet represents.

So I am looking forward to hearing, most especially, form the Chairman of the Commission on some of the specifics of the goals that you outline in your printed testimony to us.

I thank the chairman for holding this very important hearing. Hearings I think are really terrific because they are learning sessions for us. And I might that if we come in here with our minds made up about everything, I really don't know how much we are going to learn from those that we call before us to give their testimony.

So I am looking forward to it. Thank you, Mr. Chairman. And if I have any time back, I yield.

Mr. TAUZIN. And thank the gentlelady and assure here that that is exactly what these are hearings are designed to do, to teach us. And we are going to learn a lot today, I hope.

The Chair is now pleased to recognize and to reward for his punctuality the new member of our committee, Mr. Pickering from Mississippi.

Mr. PICKERING. Thank you, Mr. Chairman. And I commend you for holding this hearing today. This is an issue of great concern and interest to me. As many of those know, I spent primarily 3 years of my life during the 103d and 104th Congress as a Senate staffer, working on the Telecommunications Act of 1996. It was after that that I ran for Congress and quickly lost all of my influence.

One of the reasons I did run is that I thought if you could work out the complexities of this issue with the intense competitive pressures from all of the various industry segments, if we could find a public policy consensus in this area, then there is no limit to what we might could do in other areas as well, that people can come and work together. It was a great model, I think, and example of when Congress comes together and works together.

Now what was our hope when we passed that act? We hoped that the rules would be in place in 1 year and that competition and the implementation of the act would be completed in a 2-year period.

Were we overly optimistic? Perhaps.

We are changing 60 years of law and practice and the economy that it built up in telecommunications since that 1934 act first passed.

Did we expect the delays that came from litigation and some of the regulatory delays? We had hoped, maybe over optimistically, that that would not occur.

But where are we today? Just as spring comes, the sprouts of competition are beginning to emerge, the certainty of the litigation, as it is now nearing its end with the Supreme Court decision, the regulatory framework seems to be almost in place, and we are beginning to see the competition emerging.

And I do want to say that I think that we need to be cautious and careful not to reopen or introduce uncertainty just as we are beginning to see the fruits of our labor in the Telecommunications Act.

Having said that, there are things that can be done better, more quickly, more efficiently. Streamlining can occur. I am somewhat concerned about the length of the mergers and acquisitions and the review that has taken place at the FCC, and see if we can have a way to put a timetable in that area so that we can introduce greater certainty in the marketplace and as these investment decisions are being made.

It is with that background and with that context and the hope that we can find ways to do our job better here and working with the FCC, that we can see the full fruit of our labor in the Telecommunications Act, that I will be listening and working with the chairman on this very important act.

Thank you.

Mr. TAUZIN. Thank the gentleman very much. The Chair recognizes the gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman, for your continuing effort to help us educate ourself on these important and complicated issues. Let me just quickly say that I think that it is a very legitimate and important function of Congress in the area of oversight

of our various agencies, both for our taxpayers and for our constituents. And I think that this is an important hearing.

And I have to say that I share a lot of the frustration that has been echoed here today about the Telecommunications Act not reaching its full potential and what we had hoped to see by now.

And there is plenty of fault, I think, to go around, and I don't think I need to add additional criticism of the FCC today because you are going to get plenty of it. You don't need my help right now. So let me just say that certainly the FCC could be doing a better job. Certainly industry could do a better job of trying to compete rather than just consolidate. And I think that maybe we probably should have done a better job in the original efforts on this bill.

So there is improvement, I think, to go around. I think now, though, the time if for the FCC to come forward with a new model for a structure that, hopefully, will deal with the new times. And I think we need to talk about this. Hopefully we can come to a consensus and then move forward.

And I think that we in Congress have a responsibility. After we do find this new model that we adequately fund it. If you look at the FCC's funding over the last few years, it's been flat. Employees have gone down. At the same time, Congress continues to ask more and more.

So we've to sort of decide, if we are going to ask more we are going to have to fund you, if we don't want you to do more, then that's fine. But we can't have it both ways.

So I am glad you are here. Hopefully we can learn about this new direction.

Mr. TAUZIN. Thank the gentleman. The gentleman from Maryland, Mr. Ehrlich, for an opening statement.

Mr. EHRLICH. Thank you, Mr. Chairman, I intend to submit a formal statement for the record. And in view of that, I will forgo an opening statement at this time.

Mr. TAUZIN. The Chair thanks the gentleman. Mr. Green from Texas is recognized.

Mr. GREEN. Thank you, Mr. Chairman. And I will submit an opening statement. I just want to raise two concerns.

As a new member on—as a second-term member on the committee, in watching the FCC, and not on the committee in 1996, I had some concern last year with the potential loss of the benefits of the E-Rate program, but the FCC salvaged it because of the opposition and the way it was structured originally.

I also have a little concern about the recent ruling on the long distance charges for Internet use, and hopefully we will hear that today. But I will submit the whole opening statement.

Compared to Mr. Dingell, it is very mild.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The Federal Communications Commission is an independent agency whose mission is to encourage competition in all communications markets and to protect the public interest. In response to direction from the Congress, the FCC develops and implements policy concerning interstate and international communications by radio, television, wire, satellite, and cable.

That basically is the current mission statement at the FCC. Today we are going to discuss FCC Reauthorization and FCC reform in light of rapid communications

technology achievements, and we will try to figure out how we must reshape and refocus the FCC for the future.

Communications technology is starting to transform itself at an exponential rate. Just in the past 5 years alone we have seen an explosive growth in the use and development of the internet and wireless technology.

The internet is the one innovation that has drastically altered the telecommunications landscape. It has already started to transform the way we communicate today and the way we will communicate and interact in the future.

While we look at the future of the FCC and how they can deal with the new convergence of technologies, we also must deal with current pending issues at the FCC.

I hope that we can discuss the future of the FCC and the role they want to play, and I hope that we can get some answers to our questions.

Mr. TAUZIN. Thank the gentleman. The gentleman from Illinois, Mr. Shimkus, for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman. I think in any discussion of re-authorization I will be looking forward to our first panelist and the chairman to just address a couple of concerns. One is, what is their mission statement? What are our goals? And what are our objectives? Then how does the organization help or hinder those? Are these stated goals and a mission statement; or are they implied?

I think only then, when we understand where we have evolved to, and it really just basic problem-solving techniques, once you understand the problem, then you develop the organization to identify the problem.

The issue with agencies that have existed for over 60 years is sometimes they don't reorganize themselves to meet the new problems of today.

And with that, Mr. Chairman, I will yield back my time.

Mr. TAUZIN. Thank the gentleman. The gentleman from Maryland, Mr. Wynn, is recognized.

Mr. WYNN. Thank you, Mr. Chairman. I appreciate you calling the hearing, but in the interest of time I will defer an opening statement and submit for the record.

Mr. TAUZIN. Thank the gentleman. The gentleman from Florida, Mr. Stearns, is recognized.

Mr. STEARNS. Good morning, and thank you, Mr. Chairman, for holding this hearing on the re-authorization of the FCC. And I would like to thank Chairman Kennard for coming and all the other Commissioners.

It has been a number of years since the Commission has be re-authorized, and I know it is the highest priority of our chairman to pass an authorization bill this year that will restructure the operations of the FCC. So I think it is appropriate that we hear from the chairman.

In looking back at the Telecommunications Act of 1996, you know, the idea here was to deregulate, set a blueprint in place. To me the act, the purpose was threefold. One to begin efforts to bring competition to those sectors of the communication industry that were burdened with solitary, dominant companies. Two, foment additional competition in sectors with limited competitive players. And three, eliminate all unnecessary regulations in those sectors that have proven to be competitive for the public good.

When you look at those three criteria, I think the FCC has done a pretty good job on the first two. It has been difficult to bring new

competition to uncompetitive sectors, I think the FCC is attempting and fighting it out.

But in the last area of responsibility, the elimination of unnecessary regulations, frankly, I would say to the chairman, I think the FCC has failed.

In Title IV of the act, under section 402, titled "Biennial Review of Regulations: Regulatory Relief," the FCC was instructed "in every even-number years, beginning with the year 1998, the Commission will, one, shall review all regulations issued under this act in effect at the time of the review that apply to the operation or activities of any provider of telecommunications service, and, two, shall determine whether any such regulation is no longer necessary in the public interest as the result of the meaningful economic competition between providers of such service, and, three, effect of determination, the Commission shall repeal or modify any regulation it determines to be of no longer necessity in the public interest."

Furthermore, Title II of the act specifically instructs the FCC to review its rules concerning broadcast services and all of its broadcast ownership rules biennially as part of the regulatory review and "shall determine whether any such rules are necessary in the public interest as a result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

You know, I think this review process created in the act was to rid the free market of burdensome and unwanted FCC regulation. The FCC, under the act, does not have the statutory power to create social solutions for our Nation. By not fulfilling the mandated responsibilities of the act, the Commission has failed in its duty to comply with the law.

Saying that this review of 1998 was piecemeal, I think, is an understatement. The FCC had initiated to my latest information, just 31 proceedings on the literally hundreds upon hundreds of regulations the FCC maintains. And the FCC has issued only four orders modifying or repealing various rules. Only four.

This is not what I believe this committee had intended. In response to this, my colleagues are aware that I have introduced legislation to remove numerous broadcast ownership regulations, including grandfathering of local market agreements, which the act specifically instructed the FCC to do. And for some unfathomable reason, they continue to refuse.

Mr. Chairman, I hope we can move that bill that I have provided to a hearing and discussion with the committee.

In closing, Mr. Chairman, we do need to improve some areas of the act, but that should be the responsibility of this committee and Congress and not the Commission. I discourage the Commission from attempting to open portions of the act for new regulatory efforts. I think Chairman Kennard and the other Commissioners would agree that the act should not be reopened on their own.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The Chair now recognizes the gentlelady from the show-me State of Missouri, Ms. McCarthy, for an opening statement.

Ms. MCCARTHY. I do not have an opening statement, Mr. Chairman, but thank you for recognizing me. And I would like to put it in the record.

Mr. TAUZIN. Thank the gentlelady. It will be so ordered. The gentleman from New York, Mr. Fossella.

Mr. FOSSELLA. Other than to wish the wanna-be Irishmen like Ed Markey a happy St. Patrick's Day, I have nothing to add.

Mr. TAUZIN. Italian-Irish is something, man. Mr. Deal from Georgia is recognized.

The Chair thanks all the members of the subcommittee for their contributions. And I have just received the statement by the Speaker of the House, Mr. Hastert, which he has asked to be submitted into the record.

I won't read it all, but just some highlights, if the committee will allow me:

"I am a little envious of the subcommittee's collective role in this regard because for a few days last December I was looking forward to working with you and our colleagues to conduct rigorous oversight of the FCC. My short tenure as O&I subcommittee chairman-designate though gave way to another job, as you know.

"Mr. Chairman Kennard, I say it is good hear that you and the Commissioners see the need to scrap the outdated top-down regulatory model and are now offering a new FCC structure paradigm. I know we all appreciate hearing and plan to hold you to your recent statement that 'as long as I am Chairman of the Federal Communications Commission, this agency will not regulate the Internet.'"

He goes on to mention, of course, that the Internet was mentioned only twice, parenthetically, in the 1996 act. And how rapidly times are changing. He mentioned his work with former Chairman Fields in attempting to begin the work on FCC reform.

He said, looking back, when we enacted regulatory reform on the telecom industries, we should have also enacted regulator reform.

He is indicating his strong support for the work of our subcommittee and our full committee, and his statement, like all the written statements of the members, without objection, will be admitted into the record at this point.

[The prepared statement of Hon. J. Dennis Hastert follows:]

PREPARED STATEMENT OF HON. J. DENNIS HASTERT, SPEAKER OF THE HOUSE

Mr. Chairman, although I cannot be with you in person today at the start of these most important hearings on reform of the FCC, I wanted to speak to a few issues that have concerned me about this 65-year old independent agency. I appreciate your scheduling these hearings and want to commend you, Chairman Bliley, Ranking Member Dingell and Mr. Markey for your leadership in this important matter of FCC modernization. I am a little envious of the subcommittee's collective role in this regard, because for a few days last December, I was looking forward to working with you and our colleagues to conduct rigorous oversight of the FCC. My short tenure as O&I Subcommittee Chairman-designate, though, gave way to another job, as you know.

To Chairman Kennard, I say it is good to hear that you and the Commissioners see the need to scrap the outdated, "top-down" regulatory model and are now offering a new "FCC structure" paradigm. I know we all appreciated hearing, and plan to hold you to, your recent statement that, "as long as I'm chairman of the Federal Communications Commission this agency will not regulate the Internet." I see the Internet as an outstanding example of what happens when we do not micromanage, and instead let market forces design an economic engine of growth—I do not think

any politician can claim all the credit for the success of its creation and development.

As you know, since my service began on the House Commerce Committee in 1991, I have been integrally involved in various aspects of the FCC. Indeed, in the mid 1980's, I had the opportunity to manage legislation in the Illinois General Assembly which rewrote the Public Utility Act. I saw firsthand there the interface between the Illinois Commerce Commission (ICC) and the FCC. In 1995 and 1996, our former colleague, Chairman Jack Fields, myself and other colleagues worked on a plan to restructure and reform the FCC. In fact, we visited the FCC on a couple of occasions to "kick the tires" and see for ourselves, after talking with employees and observing their work, how best the FCC of the 1990's could be restructured to make them relevant in the 21st century.

One thing that I would like to be remembered for during my tenure as Speaker is that this was a period when *we encouraged competition to replace regulation* at every opportunity. Indeed, the FCC is a classic example of an agency that when presented with a choice as whether to regulate or not regulate, the institutional inclination seems to be to choose the former course.

By compiling a comprehensive hearing record on these issues, I am confident we can possibly remedy the current regulatory situation with a mixture of statutory changes and internal administrative reforms. We also need to encourage all of those stakeholders who are regulated by the FCC and to those others indirectly affected by it to come forward and help all of us in the cause.

Finally, many of us are concerned about opening up the "Act" again after just barely three years since we passed a massive re-write, known as the Telecommunications Act of 1996. It was a great undertaking by many members of this subcommittee, and although we all agreed that the Act as written was fair and balanced, implementation by the FCC of congressional intent has left many of us less than satisfied. Looking back, when we enacted regulatory reform on the telecommunications industry, we should have also enacted "regulator reform."

We know that the regulation of the communications industry has been a "work in progress" over the last 65 years. Title II of the Communications Act of 1934 was taken almost verbatim from the "railroad monopoly"-driven Interstate Commerce Act of 1887. In 1984, Title VI on cable services was added to the 1934 Act, and in 1993, a cellular and PCS title was added in OBRA to the 1934 Act. In fact, the term "Internet" is mentioned parenthetically only twice in the 1996 Act.

Again, look at what has happened as a result of the growth of this tremendous network in just the last three years. My point is this: we should be willing to continue to conduct oversight and to consider updates to the laws affecting telecommunications in this nation. We cannot manage lightning-speed advances in technology with "status quo" statutes. The growth of the Internet is a perfect example of this conundrum.

Mr. Chairman, I look forward to following your hearings and working with you, Chairman Bliley, and the subcommittee on this critical issue in the future. Thank you.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. STEVE LARGENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. Chairman, I want to thank you for holding this important hearing. The FCC has played, and will continue to play, an essential role in implementing the rules of competition for the 1996 Telecommunications Act. Over the past three years, the telecommunications industry has undergone a period of unprecedented growth, resulting in the development of new technologies and services that were unimaginable just a few years ago. I am, however, disappointed in the amount of litigation that has ensued since the passage of the Act, as various segments of the telecommunications industry competes for market share.

I am interested to hear each of the Commissioners and Mr. Huber's thoughts on what regulatory function the FCC should play in the coming years to accelerate competition and reduce litigation as we transition to the digital age. In particular, I want to know what the Commission's plans are for universal service reform, access charges, and the deployment of broadband services.

I look forward to hearing from our witnesses.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, HOUSE COMMITTEE ON COMMERCE

I thank the Chairman for yielding me the time.

Today, the Subcommittee meets to consider FCC reauthorization. Today is also St. Patrick's Day. You have to wonder if Chairman Kennard needs *two* reasons to enjoy a cold pint of ale this afternoon.

In any event, I am pleased that the Subcommittee is holding this hearing. The reauthorization process is a good opportunity to promote efficiency, reduce redundancy and eliminate functions that are no longer needed.

I anticipate that the Subcommittee will soon turn its attention to NTIA reauthorization as well.

At the outset, let me make clear what I think the FCC reauthorization process should *not* be: a means to re-visit issues from the 1996 Telecom Act. Why on earth would we want to go through yet another multi-year cycle of implementation and litigation?

It took *three years* to complete the last cycle, and it's not clear to me who benefitted from all this litigation . . . other than the lawyers, of course.

While there is much work to be done, the Telecom Act is working just fine. Consumers are starting to see the benefits of competition, particularly in the area of broadband services.

And, the incumbent telephone companies appear to now realize that competing is in their best interest, rather than spending their money on lawyers.

Which leads me to the issue of local competition. In light of the Supreme Court's ruling, the FCC has no excuse at this point not to make local exchange competition its highest of priorities. Your legal authority in this area is now unquestionable. Use it!

For instance, the Commission *can and should* push forward with reform of its physical collocation rules, revise its list of unbundled network elements, and speed implementation of intra-LATA toll dialing parity.

I therefore hope that the reauthorization process will be a genuine effort to streamline this important agency. This Committee has a fine record on agency reform, namely FDA reform. I hope we can use that experience to inform us here today, and into the future.

In that vein, I understand that Chairman Kennard is planning to unveil some recommended changes here today. I look forward to reviewing these changes closely.

Before I conclude, I would like to address another matter. Last year the House passed, by a margin of 403 to 16, bipartisan satellite reform legislation, cosponsored by Mr. Markey and I. We plan to legislate on satellite reform again this year.

These intergovernmental satellite organizations should be privatized. And they should be privatized in a manner that promotes competition by ending their current cartel-like structure. Our bill will encourage a *pro-competitive* privatization, and end COMSAT's monopoly over access to the INTELSAT system. No one should be permitted to get around the 10 percent outside-ownership cap on COMSAT, in the absence of overall satellite reform legislation.

Some claim that one can ignore this cap under the guise of being an authorized carrier. Any action by the Commission to facilitate another's evasion of the cap will be treated for what it is: an attempt to end-run Congress, and to undermine the legislative process, as well as unjustified on the merits. I plan to eliminate the language regarding authorized carriers in whatever legislation we introduce in order to avoid any confusion in this regard. I also think that any devotion of resources by the Commission to acting on a pending application in this regard will not serve the public's interest in comprehensive satellite reform and would add fuel to the fire of those who argue the Commission has far more employees than it needs.

I look forward to hearing the FCC's views on this matter. I thank the Chairman, and yield back my time.

Mr. TAUZIN. The Chair is now pleased to call our first witness and to recognize him for his contributions in public policy, the senior fellow from Manhattan Institute of Policy Research, a partner of Kellogg, Huber, Hansen, Todd, and Evans, Mr. Peter Huber.

I want to point out to the committee that as we invited the Commission to come and give us their views on what the FCC might look like in the future, where the 1996 act is being fully implemented in an open, competitive marketplace full of vibrant competition and less monopolies, as my friend Mr. Markey pointed out,

or providing new services to consumers, we thought it would be very useful to get someone of great reputation in this area to paint a picture for us of where these amazing technologies are going, what kind of future communications is likely to see, so that we can begin thinking of and formulating how we might want to picture an FCC working in that future.

In that regard, we have invited Mr. Peter Huber because, as Mr. Markey said, fewer people have come before our committee and demonstrated more mental capacity in this area than Mr. Huber.

He does have a background. He has worked for Bell companies. Want to put that on the record. If you see some perspectives in there that come from that affiliation and regarded as such, we will be inviting others with different perspectives to come, hopefully, as qualified and as contributing as Mr. Huber.

But I want to thank you personally, Peter, for undertaking this effort to paint this picture for us and would invite you to do so at this time.

STATEMENT OF PETER W. HUBER, PARTNER, KELLOGG, HUBER, HANSEN, TODD, AND EVANS

Mr. HUBER. Thank you very much, Mr. Chairman.

Just a few days ago, my co-authors and I——

Mr. TAUZIN. Pull the mic close to you, Peter, so we can hear.

Mr. HUBER. Just a few days ago, my co-authors and I completed our second edition of "Telecommunications Law" and sent it off to our publisher. I have a copy here. I runs about a thousand pages. It would try your patience if I started on page 1 and read it into the record.

Suffice it to say that nobody wishes more passionately than I that the third edition will be much shorter. This is much longer than the first edition, I might add.

Let me just try and paint a few facts or a picture of where I think we are headed that I believe is, in fact, relatively uncontroversial.

Within the next 5 years, the amount of traffic moving on phone and cable and broadcast and satellite wireless networks is going to increase by severalfold at least. Predictions vary, but we are looking, conservative estimates, at a three-to fivefold increase in total traffic moving over these networks.

And I don't there is really much dispute about those estimates. Where is this coming. We are not going to be talking five times more on our phones. We are not going to be watching five times as many soaps, or five times as many Superbowls. It is coming from the rest, from this explosive, remarkably dynamic growth of the web and all that implies.

Second, a plain engineering fact, which I think is also not widely disputed, the networks in place today, terrestrial broadcast networks, cellular networks, cable networks, phone networks, cannot accommodate a fivefold increase in traffic. The existing networks, based largely on analog technology and yesterday's technology, were not built for that kind of growth.

In the next 5 years, the networks that will be in place and operating and serving businesses and residences, 5 years from now, behind the jacks, behind the telephone jacks, behind the antennas,

behind the satellite dishes, those networks are going to change almost beyond recognition.

We can argue at length. I have, everybody has too about who owns the past. I am not prepared to argue about who will own the future because I don't know. You don't either, and the very intelligent and dedicated and skillful people sitting behind me don't know either. And I don't think they claim to know.

The equipment that we will be using 5 years from now hasn't been built yet, by and large. Today, already on the phone network, there is more data traffic than voice traffic. If I had made that prediction even 5 years ago, it would not have been taken seriously.

Within 5 years, I think we can quite confidently predict that on our cable networks there will be more data traffic than the existing video traffic volumes. Within 5 years, and this is almost unheard of to speak of in the broadcast networks, but we are moving into the HDTV bands now—within 5 years, I think it is quite safe to predict that most of the traffic on the terrestrial airwaves will not be conventional fare. It won't be the stuff—the conventional fare will still be there. We will still be watching Superbowl and soaps and so on and so forth, but the lion's share of the traffic will not be those things.

Every telecom medium out there is going to experience dramatic growth. We know—I think it is safe to predict only a few things about these networks.

They are going digital. They are all going digital. There won't be any exceptions to that.

Overwhelmingly they will go to packetized networks. Packet networks are quite different architecture from what we have used in the past, but they are very much more efficient. They are essentially the architecture of the web, and you boost them up fast enough and they can carry anything.

And they will be boosted fast. We are talking about very, very substantial increases in capacity on all of these networks. As I say, they are all capable of going this way. They all will go this way because if anyone of those networks, the broadcasters or cable or telephone, if anyone of them says, Look, we are happy with what we got. We are sitting still. Their traffic will migrate onto another network that goes this way.

Just as sure as day that this is coming. We don't know who will win. We are talking about a very fundamental restructuring of all of these networks.

I am, I think, also fairly confident in saying that anybody who thinks there is one technology that will prevail, or one provider who will prevail, is surely wrong. Different technologies are going to be right for Wyoming, where people are spread far apart, or for New York, where they are packed close together.

Business markets and residential markets are going to be drawing on different technologies. Demand will vary widely across different types of users, business and residential applications.

You can't guess, I can't guess, none of us can guess who will win. And to the extent our Government institutions and our structures, or this committee, or the FCC attempt to guess, implicitly or explicitly, and attempt to pick winners and losers from this fray, we are simply going to retard this very important transition.

I think it is equally fair to say that we do not know what pricing structures will emerge from this. We have three or four old paradigms at hand.

We have the local phone pricing paradigm, which is an all-you-can-eat-for-a-flat-fee, we have cable, which is a flat fee plus charges for special and premium services, we have the broadcast model, which is advertiser-supported, we have the basic catalog model, where everything is free because you are buying jellybeans online, or shopping at Land's End or something, and the telecom comes to you free.

All of those models, I think, will their place in this new structure. But again, once again, to think that we can predict which is best for a market or particular class of consumers is a big mistake.

I think it is fair to say, and this is not a reproach, I think it is simply a statement of fact, that notwithstanding the 1996 act, the FCC is still administratively and bureaucratically structured around yesterday's models. The basic title structure of the Commission, Title I, Title II, Title III, Title VI, reflects the 1934 act and accretions that there added with the advent of cable, satellite technology, and so.

The 1996 act attempted to clear away some of these divisions, but it did not go very far. In many areas, certainly not all, but in many areas the regulatory presumptions are still the presumptions of the 1930's.

It is forbidden until the Commission says it is permitted. And that often takes awhile.

Does it take longer when people go to court? You get it does. And when they go to court they quite often win. I have represented some of them. Sometimes they win. The Commission wins its share. Other people win their share.

Half the time the courts of appeal and the Supreme Court think of different reasons for upholding different parties, and the process goes up and down. And while it does, the markets hesitate and the markets wait.

I think it is, again, accurate to say, without trying to pick sides, that overwhelmingly today how I do at the Commission depends on what I can persuade the Commission to call me. If I can get them to call me a broadcaster, and trust me, there's a whole lot of room in the word broadcast, you can be doing paging and data and other things—if I can get them to call me a broadcaster, that is one set of rules.

And if I can get them to call me cable company or a cable service, that is another set of rules. And if I can get them to call me a PCS provider, that is another set. And if I am in the satellite DBS band, that is another set. And if I'm a local phone company, that is another set. But it depends which division or subsidiary I am of that local phone company, whether I am a separate sub under 272 or the main incumbent carrier.

The Commission itself has recognized this in their recent analysis of—at least its staff has—in its recent analysis of how cable, for example, should be regulated. They quite openly and honestly and correctly, I said, said, look, we can basically make cable, Internet on the cable, anything we like. We can make it a cable service; we

can make it a telecom service; we can make it an information service; we can forbear under section 10.

Well, isn't that grand. I would like to have that much flexibility too. The problem is, you don't know how it is all going to emerge until it emerges. And the process takes a very, very long time.

However the Commission makes these calls. They are subject to appeal. And as I say, the courts sometimes have different interpretations of the law than the Commission does.

I could talk in more detail about proposed restructuring and so on, but I don't think it is my place, although I will be happy to answer questions.

I will say this. I think it is tremendously tempting to look backward, to say, look, I am still worried about E–911, very important, or my constituents concern about universal service in poor areas, or just very cheap telephone service, a very important thing. Of course we should be concerned about this.

But please, I would implore this committee and the Commission itself, look forward. We are talking, we are looking at 80 or 100 percent growth in the next year or 2, and another 100 percent after that, and another 100 percent after that.

Looking forward. Let us please put in place structures that let this market unfold at high speed with a minimum of advanced oversight.

Thank you very much.

[The prepared statement of Peter W. Huber follows:]

PREPARED STATEMENT OF PETER W. HUBER, SENIOR FELLOW, MANHATTAN INSTITUTE FOR POLICY RESEARCH; PARTNER, KELLOGG, HUBER, HANSEN, TODD & EVANS.

Here's what won't change. Five years from now, Americans will still make plain old phone calls on plain old wireline phones. They will still watch movies and the Superbowl on their television sets. They will still rely, as they do today, on some mix of wired plugs and wireless antennas to get electronic information in and out of their homes and businesses.

For the ordinary consumer, the change will really center on "none of the above." Voice, which until recently occupied close to 100 percent of the telephone network's capacity, will occupy under 20 percent, and quite probably a lot less than that. Consumers, in other words, will be using phone lines to support a vast range of other services beyond voice. Cable jacks will be delivering more content than ever—but well under half of the traffic will be conventional television fare. TV stations will be broadcasting as many channels as they do today, or even more—yet conventional broadcasting will account for a rapidly shrinking fraction of total traffic moving over terrestrial airwaves in the UHF, VHF, and HDTV bands. We won't be talking less on the phone, or watching much less TV. But at home and even moreso at work, we will be spending an enormous amount of additional time beyond telephone and television—on the Web—to shop, read, browse, bank, invest, and chat.

The new-generation data and video services will reach consumers over a broad array of media, and will be offered in a great variety of service packages and prices. The wired plugs and wireless antennas already in the home today—phone jack, cable jack, TV antenna, and satellite dish—will look much the same as they do today—but they will perform very differently. They will all carry digital traffic, not analog. They will be engineered to handle traffic packetized on the Internet's TCP/IP protocol, or more advanced successors to it. And all of these ports and jacks will be fast—hundreds of times faster than they are today.

As I have noted, these same jacks and antennas will still support the services we are accustomed to today, the plain old phone calls, the old-fashioned television, the movies, the Superbowl. From the consumer's perspective, those old services will not have changed much at all. But from the provider's perspective they will have changed profoundly. No single, old service will account for most of the traffic on any network. All major networks, phone and cable, wired and wireless, terrestrial and satellite, will be capable of supporting all major services. We are engaged, here, in a truly fundamental transformation of the whole of the telecom infrastructure.

Digital networks can support encryption and addressing, which make possible point-to-point messaging: the Internet already permits slightly tinny, two-way, voice conversations. As bandwidth increases, any digital network can likewise support one-to-many communication: even on the slow, analog bandwidth of ordinary phone lines, for example, the Internet already can deliver live radio broadcasts. With digital broadband technology, today's text-based bulletin boards will support voice and video—the Internet equivalent of radio and television. E-mail will support voice and video, too—the Internet equivalent of telephony and video-phones. High-speed data links on cable networks will offer similar capabilities, spanning everything from voice telephony to digital television. Digital broadcasters will be able to provide a limitless range of other digital services in addition to plain old broadcast fare.

Every major company operating a network is scrambling to become a part of this future. For all of them, it means rebuilding network infrastructure, and at enormous cost. But the opportunity is equally enormous—and, in any event, they have no choice. Any network that is not upgraded to high-bandwidth digital will simply lose its traffic to others that are.

Even if nothing else were changing, soaring demand would force an end-to-end rebuilding of existing networks. Demand for digital bandwidth is increasing at annual rates in the range of 50 to 200 percent. By every plausible projection, it will continue growing at those rates for the foreseeable future. It will increase at least five-fold over the next few years.

If demand is going to grow five-fold—and it is—then network capacities will have to increase as much. But the existing phone, cable, broadcast, wireless, and satellite networks still rely, in significant part, on yesterday's analog technology, and they are already stretched to capacity. Systems deployed a decade ago cannot begin to accommodate five-fold increases in traffic. So new networks must be built—networks that are much more capacious than the ones they overlay. Which means, in turn, that 80 percent or more of the wires, trunks, cables, transmitters, receivers, switches, and routers that we will be using for digital transport five years from now will be built and put into commission between now and then. Nobody owns them yet. Hardware manufacturers have to build them. Phone, cable, broadcast, wireless, and satellite companies have to deploy them. Fast. And once they've built and deployed them, they have to build and deploy them again. And again, for as long as demand continues to grow at these explosive rates.

It is impossible to say with any precision who will emerge with what share of the market for digital bandwidth. A list of likely contenders must surely include both phone and cable companies, along with both terrestrial and satellite-based wireless systems, using VHF, UHF, HDTV, cellular, PCS, satellite, and other spectrum bands. Electric power companies may join the fray, too. The best technology will vary from market to market. It will likely be different for rural and urban areas, different for business and residential customers. We cannot predict how things will shake out across technologies, providers, and markets. Government should not be trying to. The harder Government tries to guess, and the more it intervenes to back up its guesses with technology-favoring or competitor-favoring policies, the more it will get in the way of the healthy evolution of the market.

Nor can we usefully guess or predict what pricing structures will emerge. There are countless different ways to price these services. They range from the traditional local telephone model—all you can eat for a flat monthly fee. To per-minute charges, like those traditionally applied for long-distance calls. To advertiser-supported services, like those traditionally used by broadcasters. To pay-to-play services, like the premium services traditionally offered by cable. Some providers will give you a free computer if you'll watch their advertising. Others will charge you $35 for a two-hour, commercial-free streaming video download of Wrestlemania. Service providers will offer free connections analogous to 800 numbers—the call is free if you shop the catalogue. Every variation in-between is possible.

We have no clear idea what kind of corporate arrangements or structures will move us fastest toward the most productive and efficient market. Judging from the ferment in the computer industry, it is safe to assume that major restructuring will inevitably occur. Again, this should come as no surprise. Most of the equipment, most of the service that will be bought five years from now hasn't yet been deployed, hasn't yet been built. New conglomerates, new joint ventures, are going to emerge to build the new infrastructure.

All we can anticipate with confidence is that demand for digital bandwidth will continue growing very fast, for many years to come. Digital bandwidth is now the most important economic commodity in the United States. It is the key to growth and prosperity. The computer industry's fortunes depend on it. The productivity of both labor and capital are, in turn, irrevocably linked to the growth of the digital infrastructure. Whether you manufacture cars or newspapers, whether you supply

electricity or medical services, digital bandwidth will be a key input to your business, and a vital component of your consumption.

The 1996 Act notwithstanding, the regulatory environment has not begun to catch up with the market now emerging, and the new technological realities. With most services, over most media, the starting legal and regulatory presumption is still this: What you want to do is forbidden, unless and until the Commission gets around to permitting it. And once it's been permitted, it may get forbidden again. You certainly can't depart sharply from past practices, or transfer your assets to a new owner, or fail to build out on the timetable favored by the Commission, or decline to carry traffic the Commission likes, or insist on carrying traffic it doesn't, without putting your licenses, permits, and regulatory favors at risk. The Commission is forever weighing—weighing charges, services, subsidies, interconnection, mergers, divestitures, cross-ownership, and more. Every major Commission rulemaking is followed by endless appeals. The Commission wins some of those appeals, loses as many more, and is forever reconsidering orders, reopening dockets, and reviewing licenses. While the Commission weighs things, and the courts reweigh, the market waits.

Much of the basic structure of the 1934 Act remains in place, despite the 1996 Act. The 1934 Communications Act was written around the technological paradigms of its day: broadcasting and common carrier telephony. The Act distinguishes wire from wireless, carriage from broadcast, broadcast from cable, voice from video, and both voice and video from data. It draws lines based on the type of content conveyed, the prices charged or not charged for conveying it, the wealth of the conveying company, and the novelty of the service. Although digital broadband services were beyond imagination at the time the 1934 Act was enacted, they are nevertheless subject to the Act's taxonomy and the regulations that have emerged thereunder. Broadband services are subject to the entry restrictions of Section 214, and tariffing requirements and rate regulation under Sections 201-205. They are subject to the franchise-like regulation that applies, under Title III, to renewals, transfers, and "trafficking" of wireless licenses.

At this point, telecom law is so convoluted that much of the regulatory battle has become one of arbitrary legal definition, nothing more. Wireline services can be slotted into Title VI (cable), or Title II (common carriage), or labeled Title I "information services." Title II services can be treated as basic, legacy telecom services, subject to the full panoply of Section 251 unbundling, or as new services partly deregulated by being placed under the ambit of a Section 272 separate subsidiary. Wireless services can be slotted into the still quite heavily regulated broadcast model, or the less regulated DBS model, or the differently regulated PCS model. Each of these choices entails profoundly different regulatory consequences. The Commission pays lip service to "technological neutrality," but it doesn't deliver it. Judging from its actions, and its own interpretations of the law, it doesn't wish to be neutral across broadband technologies, and doesn't believe that it lawfully can be.

Consider a recent analysis set out in a paper prepared by the Commission's own staff. The paper discusses how the FCC might regulate, or decline to regulate, Internet services over cable. It concludes that under current law the Commission is free to regulate these services as common carrier services, under Title II, or as cable service, under Title VI, or view them as common carrier services but forbear from regulating them under Section 10 or Section 706. Yet another option, with slightly different regulatory consequences, would be to classify them as "information services" nominally under Title I. Similarly, the Commission has declared it can regulate high-speed data services offered by phone companies under Section 251, or sidestep regulating them by persuading phone companies to set up Section 272 separate subsidiaries.

So who ends up regulated how under this labyrinth of possibilities? If Congress does not intervene to streamline things, the answers will emerge over the next five years, if we are lucky, after the Commission has proposed, and the courts have disposed, and the Commission has proposed anew, and the courts have disposed anew. Or it might take three rounds rather than two—as the Commission's "Computer Inquiries" have taken in the past. And while regulatory uncertainty reigns, the market will hesitate and hedge.

For all of its talk to the contrary, the Commission seems quite eager to maintain and extend the old regulatory paradigms, even in the face of the sweeping changes set in motion by the 1996 Act. Late last year, for example, the Commission announced it would require phone companies to "unbundle" advanced services—even though the 1996 Act made clear that unbundling was to be extended only to network elements that were "necessary" to competition, elements without which competitive services would be "impaired." The Supreme Court recently ruled that the Commission may not go so far. But it took almost three years to resolve that basic

point. Why the Commission should ever have wished to apply the whole panoply of yesterday's regulation to highly competitive advanced services remains a mystery. Perhaps the Commission sincerely believed it was legally obligated to do so by the 1996 Act. The Supreme Court, however, easily concluded that it wasn't.

The Commission has likewise failed to invoke its authority under Section 706 of the 1996 Act. That provision plainly offers the Commission flexibility to deregulate advanced services. The FCC, however, declines to read it that way.

The Commission should be price deregulating the next-generation services across the board—but it shows no inclination to do so. It should be removing these services from the unbundling mandates of the 1996 Act—but it has been pushing in the opposite direction. It should be lifting them out of the long-distance restrictions of section 271—but it won't. It should be putting all providers of high-bandwidth services, wired and wireline, telephone and cable, on the same, deregulated footing—but it simply does not want to. The Commission should be preparing its end game, its exit strategy. There are no signs at all that it is doing so.

The 1996 Act contains many of the right sentiments, and attempted to aim things in the right direction. But in its workings, as administered by the Commission, the Act has fallen short. The Commission, it turns out, has shown no real inclination to deregulate. Its primary instinct is to keep a tight hand on everything, everywhere, the law still leaves it plenty of authority to do so, and it acts accordingly.

It is time for serious change. It is time to get the Commission out of the business of concocting general solutions ahead of time, and into the business of fixing specific problems, if and when they arise. It is time to transition the Commission from its traditional role of general regulator, to a new role of arbiter, adjudicator, and enforcer.

Mr. TAUZIN. Thank you, Mr. Huber. The Chair will recognize members who would like to engage Mr. Huber before we introduce the Commission.

Mr. Markey.

Mr. MARKEY. Mr. Huber, in your testimony, you note that every Commission that rulemaking is followed by endless appeals and court challenges. Is that the Commission's fault?

Mr. HUBER. Well, I think the easy answer to that is it depends whether they win or lose. If they win, of course it is not their fault. It means they called it right. But if they lose, I suppose it probably is.

And as a statistician and somebody who writes these up, I can say that they win some, they lose some. It is by no means their fault. This is a very opaque law that they are operating under.

Mr. MARKEY. But like the Yankees, they have been winning lately. The Supreme Court has been upholding them on some of the big ones.

Mr. HUBER. Well, if you are referring to Iowa Utilities, you know, I have some clients in that, and I got to tell you in all candor, we count it, at worst, a draw and possibly a win. We have a remand on necessary and impair. And TELRIC is wide open.

You know, we ain't begun to find out who won on that one, I am sorry to say.

Mr. MARKEY. Even if the Commission agreed with you, Mr. Huber, and your law firm on every single substantive conclusion which you make about how the act should be interpreted, that still wouldn't mean that others wouldn't sue on different grounds that you were on.

Mr. HUBER. Of course you are right. Under a set of laws that gives the Commission the power to decide everything in advance, that will always be the case. I mean, if we win we will be happy, and the other side will sue.

That is how laws of this kind operate. I might add, you don't have to write laws that are structured that way. If you write laws

that say we will let the market proceed and wait for enforcement action, deliberate intervention in specific ways, which, I might add, is how the antitrust laws act, how a great deal of other consumer and commercial legislation operates, you get a quite different framework. And I might add you spend a whole lot less time in court.

Mr. MARKEY. There is an ongoing tension between deregulation and de-monopolization. Many people place deregulation as the highest goal and stipulate that those who don't support immediate deregulation just don't understand the marketplace.

Let me quote from a wise man: "The member of Parliament who supports every proposal for strengthening the monopoly is sure to acquire not only the reputation of understanding trade but great popularity and influence with an order of men whose number and wealth render them of great importance. If he opposes them, on the contrary, and still more, if he has authority enough to be able to thwart them, neither the most acknowledged probity nor the highest rank nor the greatest public services can protect him from the most infamous abuse and detraction, from personal insults, nor sometimes from real danger arising from the insolent outrage of furious and disappointed monopolists."

Now this was written by Adam Smith in 1776. And 200 years later, whether it is telephone monopolies or cable monopolies taken on by the Commission, depending upon the issue, I think that there is inevitably going to be some great grief, which the Commission is going to receive from one former monopolist or recovering monopolist or another.

But I think at the end of the day it comes with the territory. And I also believe that the 1996 act, as implemented—and I'm not saying it is perfect, we are going to have to come back and look, you know, various parts of I—but in general, I think it is working great, by your own testimony, that there has been this explosion of investments in capacity, which is out in the marketplace, whether we change a single word in the act or not.

Mr. HUBER. Well, to the best of my knowledge, the FCC funded none of that investment. I mean, the question is, whether we would have had double that with or without it. But even putting that aside, nobody, I am quite confident, that the monopoly of yesterday, which assuredly did exist. I know that. They were legal monopolies. They were de jure monopolies. The 1934 act, you were actually a criminal if you competed in those.

Of course they were monopolies. Who could possibly dispute that?

I can tell you with absolute confidence there is no monopoly in this country for 200-kilobit-per-second digital service.

Okay?

Only about a million people in the country can even get the service.

Mr. MARKEY. On the other hand, Mr. Huber, we still don't have any local phone companies. And we still don't have any wire-based cable competition. So the whole theory is great except for an ordinary citizen trying to get another cable company over the wire or local phone service over the wire. And they can't do that.

So all the band width in the world doesn't do them any good if they can't find a competitively priced alternative to the two services which ordinary people use, local phone service and cable service.

Mr. HUBER. I agree fully. Now let us take, I mean, let us try and take those and look at some real history. Okay?

Cable, okay, if you look at its regulatory history, all right, it started under de jure monopolies, franchise issued locally—just a second, just a second, because I would like to complete the answer.

What has been the one potent force for competition for cable, and particularly in states that didn't even have cable, like Wyoming and——

Mr. MARKEY. The 1992 act, which repealed local monopolies and added the programming access provision.

Mr. HUBER. No sir. No sir. There is virtually zero cable overbuilt today. It has been DBS. And you know how long it took to get a DBS license out of the Commission?

Mr. MARKEY. Until the 1992 cable—when we passed the program access.

Mr. HUBER. It was the authorization of DBS licensing, of DBS spectrum, which took 10 years longer than it should have.

I mean, cellular had a 14-year monopoly, and the PCS spectrum had been out 6 years—well, a duopoly. If PCS spectrum had been out 6 years earlier, we would have had more competition.

Mr. MARKEY. Mr. Huber, the bottom line there is the cable industry had locked up all of its programming. Who in the world is going to subscribe to a satellite service that doesn't have TNT and CNN and CNBC. It just isn't going to happen. It took the Tauzin Amendment in 1992 to make it feasible for people's business plan to be able to gather the capital investment to make these dishes.

Mr. HUBER. It took the content, but even before it took the content, it took the spectrum. And nobody got it until the FCC gave it to them.

Mr. TAUZIN. The gentleman's time has expired. I thank the gentleman. The Chair now recognizes the vice chairman of the committee, Mr. Oxley, for a round of questions.

Mr. OXLEY. Mr. Huber, welcome back. Based on the exploration of the re-regulatory scheme and the 1992 act, is there any need for the FCC to continue the cable bureau within the FCC?

Mr. HUBER. No. We should get on with the business of deregulating cable. We should get on with the business of deregulating cable in the context of a market that can compete fully and effectively against cable.

Mr. OXLEY. What is your—I noted you kind of skipped over it—but I want to bring you back in terms of what your vision is relating to FCC reform. If you were to advise this committee as to how best to deal with that, what would be your major recommendation?

Mr. HUBER. I could distill into two, although I could write a book too, but No. 1, high-speed digital services, 128.8 above or 200 and above, whatever the Commission has said 200, and above, carve them off. Take them out of the advanced regulatory world. Let people provide those services and, if problems arise, get the Commission enforcing something against them.

But create more than a presumption of statutory right to provide those services, any medium, anytime, anyplace, anywhere—there is no monopoly. The services don't exist yet.

No. 2, at the very least, let's avoid this incredible duplication of function between agencies. I am representing people mergers, and I will say it first, but I don't know why I get to represent them twice.

All right. Once before the Department of Justice and the second time before the FCC. I could go on with these, but let's do things right. Let's do them once and then get on with life.

Mr. OXLEY. So let me address that, particularly on the merger issue. So your testimony is basically that the FCC has no function whatsoever in terms of mergers.

Mr. HUBER. No. At the very least, I would say one agency. I don't even want to pick winners and losers among agencies. Okay?

If we are going—I think DOJ will do fine. I actually think they are better at antitrust enforcers, but if Congress, in its wisdom, said let's just do it before the Commission, let's do it there.

Why we do it twice, I truly do not know.

Mr. HUBER. Some of us had an opportunity to pay a visit to America Online yesterday and discuss some of the burgeoning issues with the Internet. And, one of the issues that the officers raised was the frustration that they have with getting enough band width to be able to provide all of the Internet services to rural areas, to under-served areas in cities and the like.

And I raised it—I don't know whether you saw it or not—the Time magazine article about the gentleman who had moved out to Leadville, Colorado, because he liked the lifestyle but found out that he was unable to conduct his business, which was Internet-related, because the telephone company out there was so devoid of having the capacity to provide that kind of service.

What are your comments in that regard? And what are your suggestions?

Mr. HUBER. I view it, if I am evading at first, I will get directly to it, I view it as the paramount objective of this committee and in telecom, the country, to increase availability of high-speed digital band width.

It is the essential commodity of the next century for business, for residents, for our civil freedoms—freedom of speech and so on. We clearly have got to be advancing that. At the moment, we have a bizarre structure of telephones, telephone companies being told you are going to have to unbundle what you haven't even deployed yet. All right? That sort of process grinding out before the Commission. Stuff doesn't even exist yet, and the regulations are already falling into place.

You have the cable companies desperately jockeying, saying, please, call this anything but Title II telecom service: cable service, Title I information service. Call it something else so that we don't have to give equal access, don't have to offer it to AOL, and so on.

You have the wireless PCS providers largely deregulated, but many other people, broadcasters among them, waiting in the wind, wondering what is going to hit them next as they begin rolling out their digital television, and whether they will be, you know, how

free they will be to move that into aggressive, high-speed digital band width.

I would like to tell all of these media providers across the board, You get up above that speed, you are free until we find a problem. Then we will go after you.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank the gentleman. The gentleman from Michigan, Mr. Dingell, is recognized.

Mr. HUBER. I was in three-corner pants too.

Mr. TAUZIN. The gentleman from Michigan, Mr. Dingell, is recognized for a round of questions.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. I have no questions at this time. I will have some fine questions later.

Mr. TAUZIN. The gentlelady, Mrs. Wilson, for a round of questions.

Mrs. WILSON. Mr. Chairman, I have no questions of this witness.

Mr. TAUZIN. The gentlelady, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. Since today is St. Patrick's Day and they say that the world is divided between those that are Irish and those that wish that they were. Something about this saint, he converted, obviously, an awful lot of people to the faith. Now you hold a certain faith, and you are talking about converting or conversion at the FCC over to where you are.

In terms of restructuring, and, in your view, where it should go, I know that Mr. Oxley asked you some questions about that, you have given at least one manifestation of it. Is that the sum total of how you view the FCC should be reorganized around where we are going?

Mr. HUBER. Oh no. I mean I could go on at length. There are a great number of functions that are obsolete. Okay? And there is a great amount of price regulation that should be obsolete.

I have fought this battle——

Ms. ESHOO. I didn't hear——

Mr. HUBER. A great amount of price regulation that——

Ms. ESHOO. All right.

Mr. HUBER. I think as broadcast moves into the digital world and clearly its content delivery converges with content delivery over the web, we should free up those spectrum licenses step by step and give them freedom to use that spectrum as they want.

I could go on.

Ms. ESHOO. Do you want to elaborate? I mean, that is the question I am asking you. These are all considerations for the committee, and I think that it is important to get these out on the table.

Mr. HUBER. The core structural problems are that this Commission is divided. It is divided by statute and by history and by tradition along lines that track old technologies and old service paradigms. If you are called a broadcaster, that has one set of luggage that comes with it. You are called a local phone company, another set. You are called cable, it's another.

In a high-speed digital world—it is not here today, it is coming fast, we want it come fast——

Ms. ESHOO. Now, would your model fit with the speed we know that all of these industries under the umbrella of telecommunications are moving?

Mr. HUBER. Well, in so far as my model is saying they are all going there, and as they get there, and as they try and get into those markets, let them be. Or at least start with presumptions they are allowed to provide the services and if problems arise we will come in regulate them. Sure.

And it cuts across them. We should not be structuring this—I had the extraordinary experience not long ago of talking informally somebody I would just as soon not name at the Commission. I said, how does all this fit along with cable. And I was talking about some phone company's problems.

He said: Cable, cable, cable. We don't do cable. Cable is the other bureau.

All right. And that sort of answer one just shouldn't be getting. It is not the other bureau anymore. And I'll tell you, if you think that is the least of the problems, broadcast is coming. In the 1996 act, you have given them additional slabs of spectrum. It is going to be digital spectrum. Okay?

The satellite people, Teledesic and these, are doing digital spectrum. They have got to be brought under unified and uniform management. To say we have got all these different regulatory models for people who are going to be in the same industry competing to provide the same service is a bad mistake.

Ms. ESHOO. Well, I appreciate your observations, and I think there are several points of what you have presented to us that we should be paying real close attention to.

Do you think that the criticism is of the FCC really rests more with the old model that you describe that was designed a long time ago and has not been changed or their interpretation and reinterpretation of it?

Mr. HUBER. Okay, if I have to—if I am the line judge here or so, I would say it is sort of 90 percent of the problem is statutory and 10 percent is attitude.

I wish they all had my attitude.

They don't, but they were appointed by President Clinton and I wasn't. Right?

Ms. ESHOO. We always wish the next person has our attitude. Right?

Mr. HUBER. Yes. Of course we wish that. But I mean—this law is fantastically opaque. When they say, we can call cable Internet service anything we like, I think they may well be right. They can because that is how the law is currently written.

Ms. ESHOO. Well, I think that you have made a very important point here though for the members of the committee that if in fact we come to the conclusion that you have, that this is 90 regulatory and what needs to be cleaned up from the first half of this century, then maybe that is what we should be doing.

I think it can be great political sport to beat people up because they don't agree or don't take the direction that we would want them to or thought we laid down for them to do, but I think that this can be a very important clarifying point in the work of the

subcommittee and what we may recommend to the rest of the Congress and the re-authorization.

Thank you very much, and I yield back.

Mr. TAUZIN. Thank the gentlelady. As we move along, and I just point out, there are now 1,708 radio stations on the Internet. An amazing development. Just within the last couple of years.

And the question is are they broadcasters or are they something else? I don't know. We will find out 1 day.

Who is next? The gentleman from Mississippi, Mr. Pickering, who has some background in radio, I think.

Mr. PICKERING. Thank you, Mr. Chairman, I have no questions at this time.

Mr. TAUZIN. On this side. The gentleman from Maryland, Mr. Wynn, is recognized.

Mr. WYNN. Thank you, Mr. Chairman. I believe I heard you indicate that you felt that there was adequate competition in the cable industry, or competition with cable. John Q. Citizen that speaks to me basically complains about cable rates and the fact that he doesn't believe there is enough competition and his rates keep going up. What is your view of this problem? Or do you think it is a problem?

Mr. HUBER. I have watched cable regulation come and go and come again. In 1984, Congress deregulated it largely. Some members here part of that. In 1992 we re-regulated. Now, under the 1996 act, there is a sunset on it. I think we will get it right when we recognize that cable alone can't be treated as cable alone. All right?

As long as cable alone is under one set of rules and phones companies can't compete on even terms, my clients are among them, as long as the airwave people, the over-the-air broadcasters aren't——

Mr. WYNN. If I could just jump in for a minute, is that by implication your rationale for why the phone companies or others haven't gotten into the cable business?

Mr. HUBER. The way into the cable business today is not to overlay coax and try to do 30 channels of "Gilligan's Island." All right?

It is to deploy high-speed networks. All right? Very high broadband networks that can do streaming video, that can deliver radio stations, that can deliver video. All right? And there are many, many obstacles to phone companies getting into that business.

For the broadcasters, the way into overlaying cable, not with just one channel on 6 megahertz sub-spectrum, but with four or eight channels, multiplexed and digital spectrum, is to move ahead with that process. They labor under their own quite serious set of regulations and, of course, constantly face new demands soon as they try and deploy, that how much will be children's television, what will be the political rules, and so on and so forth.

The best solution for cable today, as it has been for sometime, is to let other media truly liberate them to compete head to head with cable. Until we do that, cable will not be fully competitive. No. That is correct.

Mr. WYNN. Thank you. That was helpful. I would like to perhaps pursue that another time.

The other thing is, you were saying we can't look to the past or our past constructs, we have to look to the future. And you mentioned in the course of that discussion universal service, universal access. What do you see as the future of this notion of universal access?

Mr. HUBER. Look, let us be absolutely frank about it. One of the great triumphs of the old monopoly was that it could spread costs around, it could spread benefits around. We achieved very rapidly and very well very high penetration. It was an egalitarian, socially positive force in this country. All right?

And there was nothing like the old monopoly phone company to push toward universal service at a flat rate, poor area, rich area, I mean, they did it.

We have moved away from that model for better or for worse. Okay?

These markets are open to competition. There is now an initiative to try and make the subsidies portable. I hope that happens someday.

But, in any event, we are, to the extent we are going to get universal service, it is going to be through a different set of means now. It is going to be through competitive means, it is going to be through making subsidies portable, in other words, letting any company that wants to serve poor areas carry the subsidies with it. And that is the course we are embarked on.

I hope, in terms of spreading the telecom wealth, it works as well as the old model. It is a challenge.

Mr. WYNN. So it is possible that, perhaps, the old model in that respect, in terms of universal service, was a good thing.

Mr. HUBER. There is no questions that regulated monopolies are egalitarian. They spread the poverty around very uniformly. Okay.

If you want the real abundance, however, you have to have open markets.

Mr. WYNN. I guess it depends on where you live as to whether is spreading poverty or spreading access.

Mr. HUBER. Yes.

Mr. WYNN. One kind of follow-up question. Absent the portability of the subsidies, is there any other way to address this concern of folks in rural or under-served or other areas like that, that would not be competitively attractively?

Mr. HUBER. I know, my clients among them, would just be absolutely delighted to have this Commission issue mandates to MFS and TCG and AT&T and all the people who are serving 1301 K Street, where my offices are, and say, go over to Anacostia, go into the poorer areas, run your fiber networks too. They are not doing it because they are not required to and because that is how the new law is set up.

You can issue mandates, No. 1; No. 2, you can encourage wireless technologies, which are very non-discriminatory. They are especially important in rural areas as well. We have kept a lot of wireless technology bottle up over the years. And the more you encourage that, the more egalitarian——

Mr. WYNN. How could you encourage it? What recommendations would you give to the committee to encourage that?

Mr. HUBER. No. 1, I would begin de-zoning wireless. This Congress in 1993 put a bunch of wireless on the same footing. It put PCS and cellular and other on the same footing. They hadn't been before that. It was a tremendous plus. It wasn't enough. You have a whole bunch more spectrum in the broadcast bands, the UHF bands especially, and certainly all the satellite bands. And you have to let anybody from any band provide any service. And these all have big footprints, they serve rich and poor equally, and that the wireless lands, wired networks never have that same automatic universal footprint.

Mr. WYNN. Thank you.

Mr. TAUZIN. Thank the gentleman. Gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I have been trying to search for a good question to address. He is really above my level. So I am going to defer back and wait for the chairman to appear.

Mr. TAUZIN. I'm not sure what you meant by that. Ms. McCarthy is recognized. She's gone. Mr. Largent is recognized.

Mr. LARGENT. Just have one question for Mr. Huber. Mr. Huber, have you read the testimony submitted by Mr. Kennard?

Mr. HUBER. I shall do shortly, but I confess I was on planes Monday and I just have not received a copy yet.

Mr. LARGENT. Let me read just a couple of his comments from his first couple of pages. It says:

"Competition should be the organizing principle of our communications law and policy, and should replace micro-management and monopoly regulation.

"That consumers will receive the benefit of lower prices, greater choices, and better services."

It also says that "we must expect that in 5 years there can be fully competitive domestic communications markets with minimal or no regulation, including total deregulation of all rate regulation in competitive telephone services."

It sounds to me that what Mr. Kennard is suggesting is exactly what you are suggesting in terms of reorganization of the FCC. Do you disagree with anything that he said?

Mr. HUBER. No. That sounded very good. I wish I would see it backed up by clearer and more definite action earlier. At least as I look at the action, often, it doesn't appear to me to be advancing that. I am truly mystified, honestly mystified, notwithstanding the fact as to why we declared last fall that we were going to unbundle advanced services that nobody has even yet deployed yet.

How that step and that initiative was consistent with the idea—perhaps it was compelled by law, although I don't believe so. But how that is consistent with the notion that we are going to try and deregulate things, if you are going to deregulate surely the place to start is with services that don't yet exist that nobody is yet providing and that surely nobody has yet monopolized. You can't have a monopoly if you are not there yet.

Those objectives are great. We see eye to eye on objectives.

Mr. LARGENT. Thank you, Mr. Huber. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Largent. Mr. Fossella.

Mr. FOSSELLA. Thank you, Mr. Chairman. I don't know if I am asking the same question in a different way, but do you think the

FCC should be organized by technology, telephone, cable, broadcast, and wireless?

Mr. HUBER. At least on a going-forward basis, it should be organized around services. High-speed digital services going forward, all right, should be under a single jurisdictional umbrella with an absolutely compelling mandate to say open these markets, let people do it. This trumps the other stuff, it trumps the legacy stuff, if you are up in this domain.

Mr. HUBER. Yes. That should cut across the bureaus completely.

Mr. FOSSELLA. And second, and along those competitive notions, to what extent is regulation necessary, if at all?

Mr. HUBER. You know, after 65, or 62 years, of statutory monopoly, legally enforced monopoly, it is not unreasonable to say we are going to have to have a little bit of law to change course and direction. I have written books saying abolish the FCC, but I wrote them with some care, if you actually read beyond the cover. I think there is a transitional process.

It is not particularly surprising to me that we are at the high-water mark of regulation. We have a lot of the old models in hand, and we are also trying to build the future. What is surprising to me is tenacious the past is, and how much it still controls and limits our movement to the next generation.

Mr. FOSSELLA. I haven't read your book, but one of these years I promise to do so. Wherein do you think the regulation should be, specifically?

Mr. HUBER. A certain amount, and I think Iowa Utilities as interpreted by the Supreme Court is on the mark here: a certain amount of unbundling of the core residual monopoly areas is appropriate.

That has been in process since 1968 in Carter Phone. We unbundled the handset; we unbundled long distance; we unbundled the wireless services. A certain amount of that made sense.

I think it can be pushed to gross excess, and in my view it has been. But other brilliant people have different views. I am aware of that.

I think, residual price regulation, lifeline service, services for the poor, we are going to have that as long as there are single providers of legacy services, all right, but keeping it focused.

There is a going to be a residual subsidy process. I would like to see it explicit, and I would like to see it done through Congress rather than through a Commission. But we subsidize lots of things in this country. It is part of a valuable, necessary social policy.

I don't think any of us is absolutist about that. I'm certainly not.

Mr. FOSSELLA. I yield back, Mr. Chairman.

Mr. TAUZIN. Thank the gentleman. Before I let you go, Mr. Huber, the Chair would recognize himself briefly.

Oh, Mr. Stearns has not been recognized. I'm sorry.

Mr. STEARNS. Thank you, Mr. Chairman. You know, Mr. Huber, your opening statement mentioned that the bill intended to deregulate but the FCC is operating under an old structure that is not deregulatory. That is basically, I think—is that an accurate sort of statement of what you said opening?

Mr. HUBER. Yes.

Mr. STEARNS. Okay. Let's say I was client and I came to you and I wanted you to represent my Internet company, what would you categorize the Internet company? I mean, would you say I am a cable, or broadcast, a telecommunicator, I mean, what would you suggest that I call myself to the FCC.

Mr. HUBER. Well, first, I would have to ask you a little bit more of what kind of an Internet company are you. Are you like AOL, in the content layer, that easy. I want you up under Title I. I am going to call you an information service provider.

If you are going to provide any kind of access, or any kind of actual transport, then it is a much tougher call. Tell me some more. Which speed are you looking for? And which area of the country? And maybe we will try to slot you in under cable, if that is the medium you want to use. Maybe we are going to get you under broadcast side band or, you know, FM side band or VBI or something. I mean, there are—I got a book on it. We will find a home for you.

Mr. STEARNS. Oh. I understand.

Is this just the real world. We can't change that. In other words——

Mr. HUBER. You can change it. I can't.

Mr. STEARNS. Are you suggesting that this committee go ahead and try and change it so that when I came it would be clear who I am?

Mr. HUBER. On a going-forward basis for new services for the future that is unfolding, it is readily possible.

Mr. STEARNS. It is possible for us to come up with categories that everybody would know right away who they are?

Mr. HUBER. On a going-forward basis for the high-speed services because nobody has them yet. They are just a drop in the bucket. And that is what you have to clean up. You really do.

Mr. STEARNS. Okay. Mr. Oxley talked about the broad-band Internet access. If you were a Congressman or Senator, what would you propose to make sure that broadcasters, long-distance operators, RBDOCS, cable, everybody, could get into this pipe. How would you structure this thing? What would you do legislatively? OR just let the market develop?

Mr. HUBER. It is a little bit risky to write legislation on the hoof here without pen in hand, but you can define a regime of service, basically by speed, you know, 128.8 and above or 56.6 and above or 200 and above——

Mr. STEARNS. Let's say like a T–1 line so that everybody could videostream into this as well as put in other information topped onto the videostream.

Mr. HUBER. Roughly speaking, anybody with any medium, wireless, terrestrial or satellite, wireline, cable or phone, okay, forget the names. That is your service. We are going to start with the presumption, A, you're allowed to provide it, all of it, not just little bits, you can do that; B, you can bundle or unbundle or sell and resell, I mean freedom out there.

Those markets don't exist yet.

Mr. STEARNS. So how would you assure that maybe if Oxley and I were in our garage starting an Internet company, we would have access just like AT&T or Disney or anybody, I mean, how would assure that any of us could pay the money to get access?

Mr. HUBER. Look, the absolute assurance I can't give. I can only propose the same assurance that I can give you on your ability to buy a hamburger, okay, which is that open markets and open entry and many different media somehow guarantee that if it is not McDonald's it will be Burger King. All right?

I mean that is how competitive markets work. But can I guarantee for everybody. It is in the nature of open and competitive markets that absolute guarantees aren't given, not by government.

Mr. HUBER. So you don't think the Federal Government, Congress should step in and try top say we are going to regulate what this pipe will be to protect everybody. The only effect of doing so will be have fewer pipes available to fewer people.

We've been there, done that. Okay? And it was all at voice-grade level. We had that for 60 years. Okay, so basically you let the market decide.

Mr. HUBER. Going forward for the new service—I don't want to sound ridiculous, all right. I know the legacy services are there. Of course there is going to be a transitional period, perhaps a long one, in deregulating those. But we have to look to the future to the terrible disease in the town, particularly, is always to be solving yesterday's problems, and in many industries that makes sense. In an industry that is doubling in size very 2, 3 years, no, it does not make sense.

Mr. STEARNS. You know, if we had an FCC for the computer revolution, probably it would not have taken off like it did. Wouldn't you agree?

Mr. HUBER. I would.

Mr. STEARNS. Yes. Cause your idea of abolishing the FCC means just let us roll and see what happens.

You know, in my opening statement, I mentioned that under the biennial review of 1998, the FCC had initiated to our information, just 31 proceedings on the literally hundreds upon hundreds of regulations that the FCC maintains, and that the FCC had issued only four orders modifying or repealing various rules.

Assuming that information is accurate, don't you think they are way behind in repealing and trying to initiate——

Mr. HUBER. Yes. They are way behind. I mean, this Commission, like all Commissions before it, holds onto power and authority. It holds onto power to control transfers of licenses, whether they are wireline licenses or broadcast licenses, quite unnecessarily. It holds onto power to zone content, quite unnecessarily, in my view.

Commissions, agencies tend to do that. Yes.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Stearns. Let me carry Mr. Stearns' observations a little further, Mr. Huber. In differentiating between the service and the facilities which provide service, recognizing that we adopt a policy that says everybody can get into these new services. Go to it. Offer them. But also recognizing that are a limited number of facilities that can now deliver those services from the provider to the user.

Should we have classes of facilities which are open and accessed to providers? And other classes which are closed? Should all of them be open to all providers for access, bundled or unbundled? Should they all be on their own to do what they want to do, as

some would propose? To use their networks the way they see fit and to allow access for whom they choose?

Where do we go with this. I mean, the concern I hear expressed more often than not in the high-speed broad-band area is that if there are going to limited facilities for people to use, and each facility eventually gets the right to pick and choose who is using those facilities, that you end up with some problems for users and providers.

If on the other hand, you have a company that has to be open to all providers because it is called something, it is called the telephone company, as a common carrier as opposed to another company that is doing the same doggone thing, just is called something else, and doesn't have to be open, is that the world we want to envision? And what do you see there?

Mr. HUBER. It is absolutely correct to say there are going to be some finite number of providers, but the smallest finite number is zero, okay? And that is where we are today for most of these services in most places. You've got high-speed digital services in a million, maybe a couple of million, depends whose estimates you take, but a few million of residential lines. Okay?

We have the old style services for 150 million, a 100 million homes. So, you know, No. 1 challenge is to get from zero to one or two or three. All right? And we want that process to happen as quickly as possible.

I know the fact is today that if I do Internet access on TCPIP protocols over cable, I am going to call myself anything but a common carrier, and I will get away with it. As of today I will get away with it.

The dominant, I wouldn't dare go so far as to call them a monopoly, I do know they are the dominant provider today of high-speed residential, has got themselves a nice little regulatory niche there.

Phone companies in this category are not the dominant providers. They are dominant providers of slow service, but not the fast stuff. And they are under a quite different regulatory ambit.

Let us see if we can get up to 10 or 20 or 50 million providers, and look, if by chance then, we find out, gee, you know the AOL's are getting frozen, I don't for a minute think they will be, I think there is more money to be made in open systems than closed systems, and I think cable is probably——

Mr. TAUZIN. It's a healthy debate, but it also relates to how we restructure the FCC because you make the very valid point that depending upon what the FCC calls you in this area, you are either regulated as an open structure or regulated as a closed structure. Right?

Mr. HUBER. Yes.

Mr. TAUZIN. So being called something is pretty advantageous. And being regulated by the right bureau is pretty advantageous.

Mr. HUBER. Very.

Mr. TAUZIN. And that is kind of silly in this new world. It is not very rational, is it?

Mr. HUBER. It is worse than silly, Mr. Chairman.

Mr. TAUZIN. Yes. The second thing I wanted to get to, is the—because some of the Commissioners will speak to in just a minute, and I'm very interested in what they have to say about it—the

Commission has, on this 1930's model, regulating monopolies for consumer protection purposes, universal service purposes, what have you, is based upon the concept of public-interest standards.

Commissioner Furchtgott-Roth correctly points out public-interest standard means something different to each class of service. It is either a broader standard or a weaker standard, depending upon what kind of license you hold.

In a world where all these services are merging, they are becoming the same in a digital world. How can the Commission operate with so ambiguous a standard? And how do we move from a regulatory paradigm, based upon that standard, to an enforcement organization that might come out of this process?

Mr. HUBER. Well, understand first that the main place the public-interest standard is enforced today, is in license issuing and license transfers. And it is enforced because it is written into the law. The Commission didn't make up those words. They are there in United States Code.

But there is way, way more regulation and oversight of license issuance and license transfer than there ought to be. I mean, routine license transfers ought to be more than routine. We've got the Department of Justice that will dive in if it doesn't like the hands they are ending up in. Or if not DOJ, then the FCC do it, but let's not do it twice. Okay? Let's do it once.

I think the Hart-Scott-Rodino Act gives pretty good review. If you truly sweep aside the licensing transfer overhead, most of which is wasted, you will solve a lot on that.

Mr. TAUZIN. Peter, we thank you very much. The Chair wishes to express his and the committee's appreciation for your written presentation and for the excellent presentation this morning. As I said, we will continue this process. And we have a lot to think about as a result. We thank you.

Thank you, Mr. Huber. We are now pleased to call up the Commission and to recognize the Chairman of the FCC and the other Commissioners for their presentations today.

In that regard, Mr. Chairman, let me offer a word of thanks and appreciation for the fact that you all are willing to engage us in this discussion, and to offer suggestions as to how we might move forward in this effort.

And to, indeed, separate the question of our concerns about the FCC as an agency, as a structure, from the very excellent individuals who serve on the Commission today and who have served it before. We deeply all of you for the contributions you make to our country and for the work you do on the Commission.

I want to separate those very clearly in the beginning because, as you know, I have deep respect for you personally and for the other members of the Commission. Our comments, our concerns are how we can build a better agency for the future, and I want to direct as much as I can the work of the committee in that respect.

I am pleased now to introduce and welcome the Chairman of the Federal Communications Commission, Bill Kennard. Chairman Kennard, thank you, sir. Again, your written comments are part of our record if you would like to engage us in conversation, we would greatly appreciate it.

Mr. Kennard.

STATEMENTS OF HON. WILLIAM E. KENNARD, CHAIRMAN; ACCOMPANIED BY HON. SUSAN NESS, COMMISSIONER; HON. HAROLD W. FURCHTGOTT-ROTH, COMMISSIONER; HON. MICHAEL K. POWELL, COMMISSIONER; AND HON. GLORIA TRISTANI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. KENNARD. Thank you very much, Mr. Chairman, and I appreciate very much the remarks that you just made. And I also appreciate your convening this hearing. I am looking forward to having a very productive dialog with you and other members of this committee as we look to the future of the FCC and regulation.

And clearly we are meeting here today at quite an extraordinary time, a time that is full of promise and unlimited potential, and at a time when we all are privileged to work in a field that is literally booming. I mean, all the economic indicators in the communications business are up. Job growth is up. Revenues are up. Investment is up. And we have prepared some charts for you that demonstrate that very graphically.

So I think that it is wise for us to pause for a moment and just take stock of what is happening in the marketplace. There is a lot of good things happening out there in the communications marketplace.

Now there is no question that the current economic boom that we are experiencing in this country, the longest peacetime expansion in our economy's history, is being fueled in large measure by advances in the telecommunications business.

Over the past 3 years alone, revenues in the communications sector have grown by over $100 billion, as indicated by these charts here. The revenue among local service providers, companies that are providing competition to the incumbent local telephone companies, are way up. Their revenues more than doubled in 1997, and jumped again in 1998.

And with these profits and growth, this industry has expanded and over 200,000 jobs have been created in the past 5 years.

The wireless industry is another terrific example where we have seen a lot of growth. I don't know if we have our wireless chart here. Oh, there it is.

In that industry, since 1993, capital investment has more than tripled for a cumulative total of $50 billion. Service is becoming increasingly more reliable and affordable. Almost 70 million Americans are using wireless phones today in this country. And Americans are paying 40 percent less for wireless service than they were 3 years ago.

And I submit to you, Mr. Chairman, that this didn't just happen. It happened because we have in this country what I believe to be the right statutory and regulatory framework for this growth. And I believe that Congress got it right in the 1996 act. You established a blueprint for growth and investment and innovation that is working.

Now, obviously, the FCC needs to change. I think—I know that every Commissioner before you has indicated that we need to engage in this process of change and re-evaluation. And as I have detailed in the report that I will submit as my written testimony, it's

a report entitled "A New FCC for the 21st Century," we expect the FCC to change. It has to change. We have no choice.

I envision an FCC that is much more efficient, more streamlined and focusing on what I think will be the three core functions of the agency for the future. One is consumer protection. As these markets become more competitive, there is a dramatic increase in the demand for the FCC to protect consumers in the marketplace. We see that with slamming and cramming, and issues about disclosures on telephone bills.

Consumers are confused out there. They need an agency like the FCC to protect them, to give them the information that they need to make informed choices in the marketplace.

And universal service is another core function. As we heard Mr. Huber say, this is a function that will have to be taken over by Government, and Government will have a continuing role in this area. Because we know that the market alone is not going to ensure that our poorest Americans and Americans in rural communities and inner cities have service.

And the third area is spectrum management. If we were to do as some suggest and completely abdicate our responsibility to manage the spectrum, one of our great national resources, there would be absolute chaos in this country, I am convinced of that.

So this agency has to focus on its continuing spectrum management functions.

But I do believe, as has been suggested by you earlier, that our mission will change and that the traditional boundaries delineating the FCC's current operating bureaus will become increasingly less relevant over time. And I believe, as I set forth in my written testimony, that the FCC will look very, very different over the next 3 to 5 years.

It will be doing very different things. We are beginning that process already. This change is inevitable, and it is necessary.

But I do want to stress that we want change, we don't want chaos. The implementation of the 1996 act was a monumental task undertaken by the FCC. And we are just now reaching a point where some of the major jurisdictional issues that arose out of that act, that were litigated in the courts, are being resolved.

When I talk to business people and people on Wall Street and, indeed, many of you, what we need is stability. This is the message that I am hearing. Give us some predictability and stability so that this framework can come to rest and we can stay the course and continue the job of bringing competition to these markets.

I am proud of the work that the FCC has done over the last few years. I think that the FCC has undertaken this monumental task in a very professional way, and I think we have a lot to be proud of.

And the other thing that I would stress, and this has really come home to me as I have had the privilege of meeting with my counterparts from other countries, many of us around the world today are working hard to bring competition to telecommunications markets. This is not just an issue that we are dealing with in this country. It is a worldwide movement. And those of us who have really put our shoulder to the oar and are doing the hard work of opening up these markets find that this is not a popular job.

This doesn't make you popular to go to incumbent companies and say, open your markets because we must have competition. But it is an essential job because we have to get it done.

If we don't get it done, the alternative is there is going to be an antitrust suit someday in the future and we are all going to look back at this period in history, this pivotal time, and say, gee, if only the FCC had stayed the course, been a little more aggressive in opening these markets to competition, perhaps we could have avoided divestiture of some of these facilities.

The report that I have submitted is the first step in developing a 5-year strategic plan for the agency. I hope to get a lot of your feedback today and over the coming weeks. I hope that we will hear from members of industry, consumer, and many, many others on this plan. This should be a very public process, where we solicit comment from a lot of people.

The changes that we are proposing in this plan are not trivial at all. They are substantive, they call for a re-making of the agency. So it is relevant in a rapidly changing industry.

But no matter how it changes, the FCC must remain vigilant in ensuring that its core functions are done, and that is promoting competition, fostering the growth of new technology, ensuring that we have universal service and good, quality spectrum management.

And first and foremost, we've got to ensure that all Americans participate in this revolution. I truly believe that if we do not ensure that all Americans participate in all of this economic growth, this revolution in communications will have been a failed revolution.

But I know working with you and working with terrific staff of the FCC that we can change the FCC, and we will change it for the better.

Thank you, Mr. Chairman.

[The prepared statement of Hon. William E. Kennard follows:]

PREPARED STATEMENT OF WILLIAM E. KENNARD, CHAIRMAN, FEEDERAL COMMUNICATIONS COMMISSION

I. THE FEDERAL COMMUNICATIONS COMMISSION AND THE CHANGING COMMUNICATIONS MARKETPLACE

A. Introduction

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

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

The imperative to make the transition to fully competitive communications markets to promote the widest deployment of communications services is more important today than ever before. In 1934, electronic communications for most Americans meant AM radio and a telephone, and sending the occasional Western Union telegram. Today, it means AM and FM radio, broadcast and cable TV, wireline and wireless telephones, faxes, pagers, satellite technology, and the Internet—services and technologies that are central to our daily lives. Communications technology is

increasingly defining how Americans individually, and collectively as a nation, will be competitive into the next century. It is increasingly defining the potential of every American child. So the goal of bringing communications services quickly to all Americans, without discrimination, at reasonable charges, continues to be of paramount importance. Competition is the best way to achieve this goal, while continuing to preserve and protect universal service and consumer protection goals.

To accomplish this goal, our vision for the future of communications must be a bold one. We must expect that in five years, there can be fully competitive domestic communications markets with minimal or no regulation, including total deregulation of all rate regulation in competitive telephone services. In such a vibrant, competitive communications marketplace, the Federal Communications Commission (FCC) would focus only on those core functions that cannot be accomplished by normal market forces. We believe those core functions would revolve around universal service, consumer protection and information; enforcement and promotion of procompetition goals domestically and internationally; and spectrum management. As a result, the traditional boundaries separating the FCC's current operating bureaus should no longer be relevant. In five years, the FCC should be dramatically changed.

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

B. The State of the Industry

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

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

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

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

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

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

Communications markets are also becoming increasingly globalized as the Telecom Act's procompetitive policies are being emulated around the world. Other countries are modeling their new telecommunications authorities after the FCC. As other countries open their communications markets and increase their productivity,

new services and business opportunities are created for U.S. consumers and companies, as well as for consumers and companies worldwide.

C. Communications in the 21st Century

Even more change is expected in the telecommunications marketplace of tomorrow. In the new millennium, millions of consumers and businesses will be able to choose from a range of services and technologies vastly different from those available today. Packet-switched networks, running on advanced fiber optics and using open Internet Protocols to support seamless interconnection to transport immense amounts of information, will be ubiquitous. Millions of homes and businesses will be linked to this "network of networks " through "always on" broadband connections. Outside the wired confines of the home or office, "third generation" wireless technologies will provide high-speed access wherever a consumer may be. Satellite technology will increase the ability to transfer data and voice around the world and into every home.

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

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

D. Impact of Industry Convergence

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

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

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

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

do that within the confines of the existing statute, we need to work with Congress and others to reform the statute.

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

A. The Transition Period

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

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

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

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

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

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

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

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

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

In the mass media area, we must continue the pro-competitive deployment of new technologies, such as digital television and direct broadcast satellites, and the maintenance of robust competition in the marketplace of ideas. To meet these goals, we must continue rapid deployment of new technologies and services and regular over-

sight of the structure of local markets to ensure multiple voices, all the while updating our rules to keep pace with the ever-changing mass media marketplace.

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

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

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

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

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

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

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

Universal Service, Consumer Protection and Information. The FCC will continue to have a critical responsibility, as dictated by our governing statutes, to support and promote universal service and other public interest policies. The shared aspirations and values of the American people are not entirely met by market forces.

Equal access to opportunity as well as to the public sphere are quintessential American values upon which the communications sector will have an increasingly large impact. We will be expected to continue to monitor the competitive landscape on behalf of the public interest and implement important policies such as universal service in ways compatible with competition.

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

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

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

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

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

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

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

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

A. The FCC's Evolving Structure

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

focus on providing consumers information and protection, enforcing competition laws, and spectrum management.

In sum, we must be structured to react quickly to market developments, to work more efficiently in a competitive environment, and to focus on bottom-line results for consumers. As competition increases, we must place greater reliance on marketplace solutions, rather than the traditional regulation of entry, exit, and prices; and on surgical intervention rather than complex rules in the case of marketplace failure. We must encourage private sector solutions and cooperation where appropriate. But we also must quickly and effectively take necessary enforcement action to prevent abuses by communications companies who would rather cheat than compete for consumers. Ultimately, throughout the agency, we must be structured to render decisions quickly, predictably, and without imposing unnecessary costs on industry or consumers.

B. Current Restructuring Efforts

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

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

The new Enforcement Bureau will replace the current Compliance and Information Bureau and, likewise, the new Public Information Bureau will include the current Office of Public Affairs. Therefore, the total number of bureaus and offices at the Commission will remain the same.

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

1. Enforcement Bureau

Since the Telecom Act was passed, telephone-related complaints have increased by almost 100%. In 1996, the Common Carrier Bureau received over 28,000 complaints; in 1998, that number increased to over 53,000 complaints. With the increase in competition, we expect even more complaints to be filed as consumers grapple with changes in both service options and providers. While we have been implementing streamlined, electronic processes to address this burgeoning workload, we have also determined that the consolidation of the Commission's currently dispersed enforcement functions into one Enforcement Bureau is a necessary and important step to providing better service to the public.

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

The consolidation of various FCC enforcement functions also responds to the fact that the need for effective enforcement of the Communications Act and related requirements is becoming even more important as competition and deregulation increase. As communications markets become increasingly competitive, the pace of de-

regulation will intensify. Those statutory and rule provisions that remain in an increasingly competitive, deregulatory environment will be those that Congress and the Commission have determined remain of central importance to furthering key statutory goals—e.g., providing a structure for competition to flourish, assisting customers and users of communications services in being able to benefit from competitive communications services, ensuring that spectrum is used in an efficient manner that does not create harmful interference, and promoting public safety.

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

2. Public Information Bureau

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

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

The creation of the Public Information Bureau allows the Commission to better serve the public by establishing a single source organization as a "one-stop" shop or "FCC General Store" for handling all inquiries and the general expression of views to the Commission, thereby better meeting the public's information needs. Merging the resources of the Office of Public Affairs, which includes public service and inquiry staffs, public notice distribution, and the management of the FCC web site, with the FCC Call Center will provide a streamlined, more efficient, and consolidated information source for the public. Consumers would only have to contact one source, whether by telephone (1-888-CALLFCC) or by E-mail or the Internet (FCCINFO@FCC.GOV). The Public Information Bureau also plans to establish one source for mailing inquiries to the FCC (for example, P.O. FCC).

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

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

3. Streamlining and Automating the FCC Licensing Process

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

across the agency by reengineering and integrating our licensing databases and through the implementation of electronic filing.

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

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

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

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

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

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

4. Budget and Workforce Impact

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

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

The Commission is dedicated to keeping staff informed and involved in our restructuring and streamlining efforts, and to minimizing workplace disruption that may result from these efforts through staff retraining, reassignment, and other methods. It is critical, as we consider ways to restructure and streamline Commission operations, that we continue to recognize and respect the hard work of our employees, many of whom have been with the Commission for many years. Change is always difficult, and it is imperative that our staff understands and supports the necessary changes that are taking place—and will continue to take place—at the

Commission. Accordingly, we are working closely with the National Treasury Employees Union (NTEU) to ensure that staff is involved in all these issues and that their views are incorporated into the Commission's planning process.

5. Restructuring Process and Timeline

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

C. Restructuring to Reflect Industry Convergence

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

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

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

IV. SUBSTANTIVE DEREGULATION EFFORTS

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

A. FCC Biennial Review of Regulations

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

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

After input from the public, the Commission initiated 32 separate biennial review rulemaking proceedings, covering multiple rule parts, aimed at deregulating or streamlining Commission regulations. The Commission devoted substantial attention and resources to the biennial review. Roughly two-thirds of the proceedings involved common carrier deregulation or streamlining. The Commission also instituted a broad review of its broadcast ownership rules. To date, the Commission has

adopted orders in ten of the 1998 biennial review proceedings, with others to be forthcoming. (See Appendix B)

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

B. Continued FCC Deregulation Efforts

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

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

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

V. STRATEGIC PLANNING EFFORTS

A. Background

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

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

B. FCC Implementation of the Results Act

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

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

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

C. Impact of the Telecom Act

Enactment of the Telecom Act in February 1996 had a profound impact on the FCC. Pursuant to the Telecom Act, the FCC was required to initiate numerous

rulemakings, many with statutorily mandated and expedited notice and comment period. The impact of implementing the Telecom Act affected every aspect of the FCC—its resource allocations, its schedule for rulemakings, and its very organizational structure—for more than two years.

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

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

D. New FCC Strategic Plan

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

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

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

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

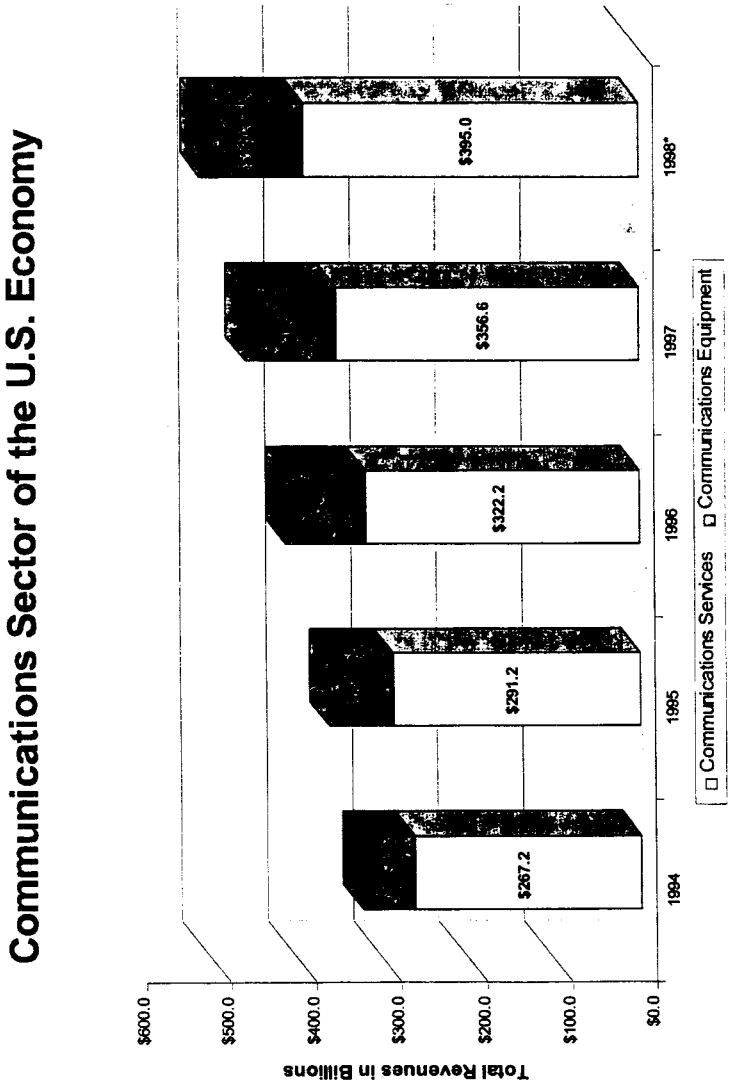
Our draft Strategic Plan, along with any implementation proposals, will be made public and we will actively solicit comment. We will issue a Public Notice encouraging the public to comment on our draft plan, which will be displayed on our Internet Home Page by July 1999. We will hold a series of meetings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

VII. CONCLUSION

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

others on a critical assessment of what the "New FCC" should look like, and how we can get there.

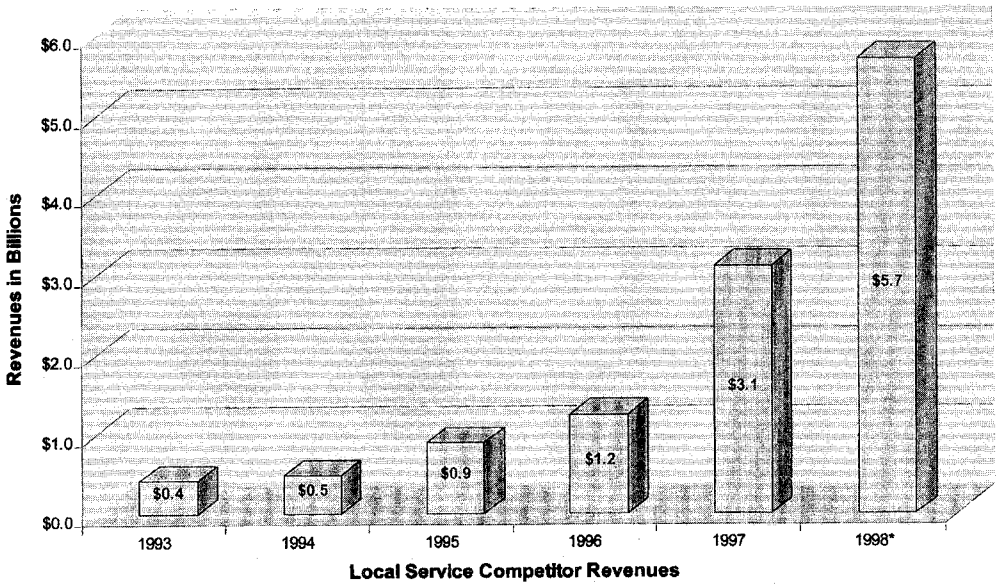
APPENDIX A



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

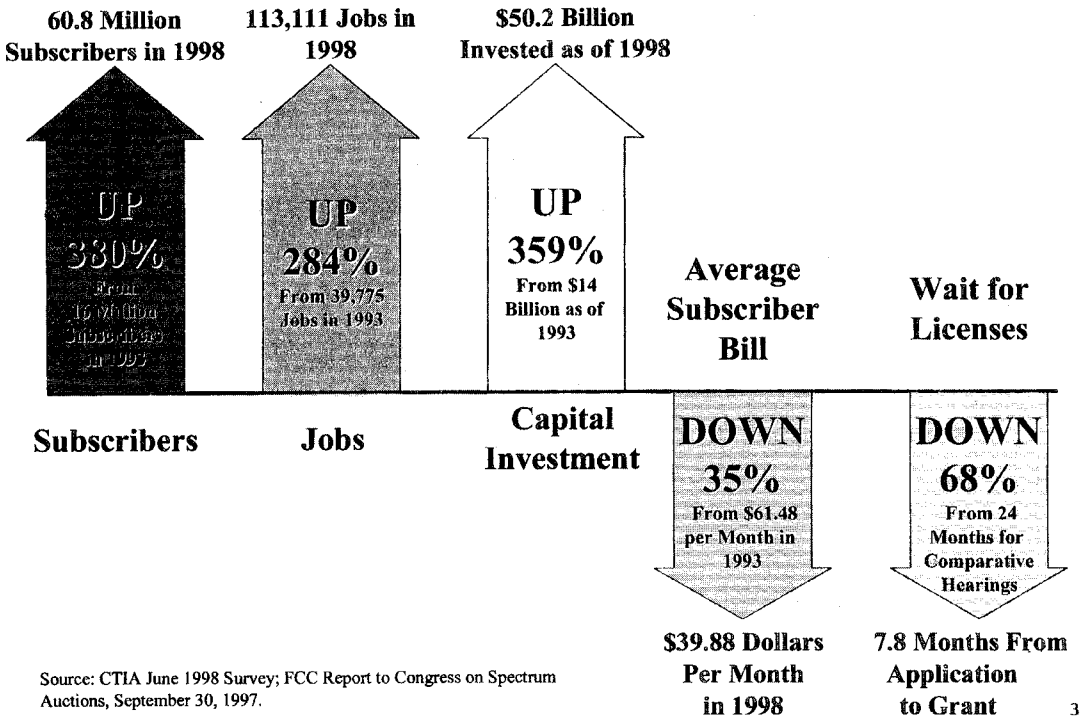
1

Revenues of New Local Service Competitors



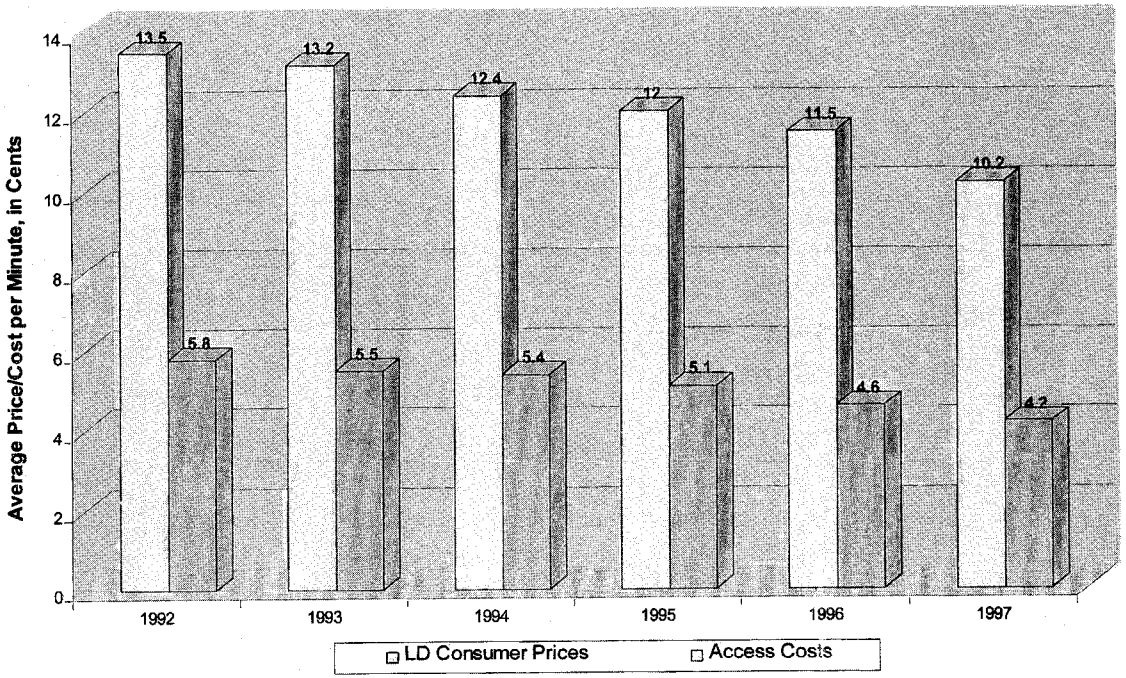
* 1998 figure is an ALTS estimate.
Source: IAD, Local Competition Report. Local service competitors refer those identifying themselves as CAPs and/or CLECs on their TRS Worksheets submitted to the FCC.

Charting the Growth in the Mobile Telephone Industry 1993 - 1998



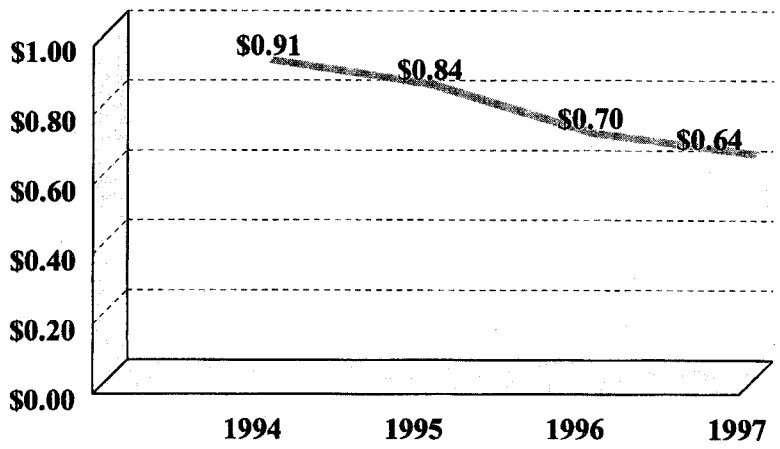
Source: CTIA June 1998 Survey; FCC Report to Congress on Spectrum Auctions, September 30, 1997.

LD Consumer Prices and Access Costs are Falling*



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

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

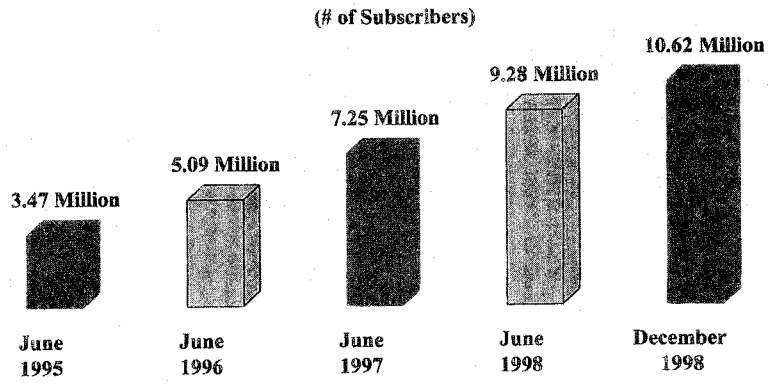


*** Consumers can obtain even lower per minute rates under some rate plans**

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

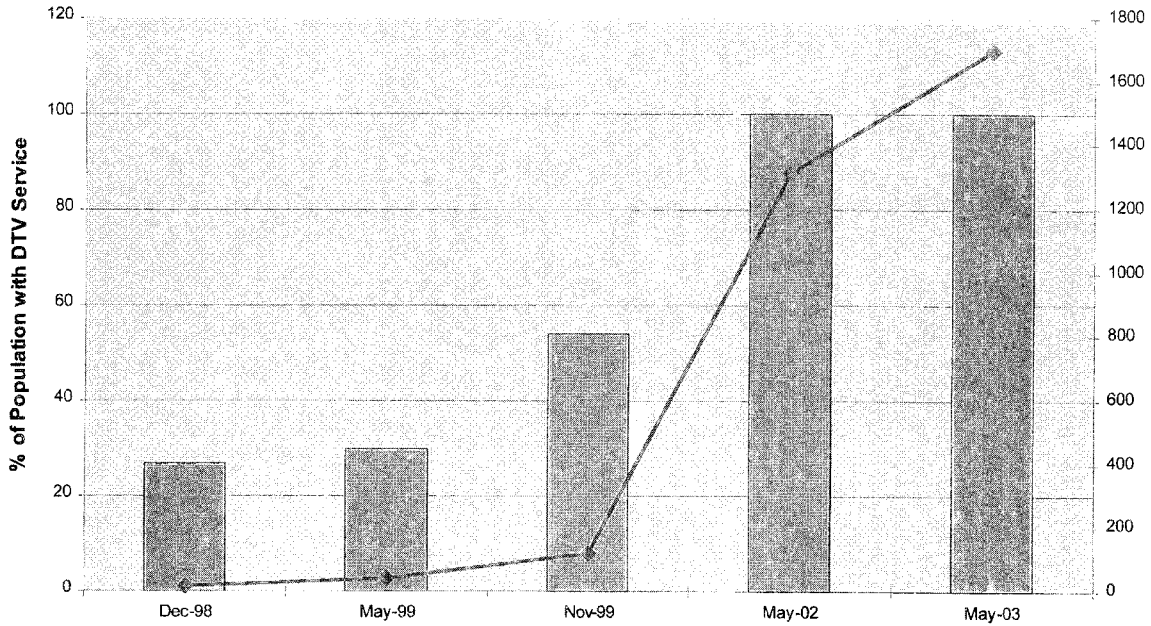
DTH/DBS/C-Band GROWTH

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



Source: DBS Investor

DTV Build-Out Schedule



NOTE: 38 of the first 40 stations scheduled for DTV have been granted construction permits

APPENDIX B

1998 BIENNIAL REGULATORY REVIEW

I. PROCEEDINGS INITIATED/COMPLETED—ORDERS ISSUED

TELECOMMUNICATIONS PROVIDERS (COMMON CARRIERS)

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

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

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

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

OTHER

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

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

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

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

Modify or eliminate Form 325, annual cable television system report. *1998 Biennial Regulatory Review—"Annual Report of Cable Television System," Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules*, CS Dkt No. 98-61, *NPRM,* FCC 98-79 (rel. Apr. 30, 1998), *R&O*, FCC 99-12 (rel. , 1999) [Adopted Feb. 1, 1999].

Streamline and consolidate public file requirements applicable to cable television systems. *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements,* CS Dkt No. 98-132, *NPRM,* FCC 98-159 (rel. July 20, 1998), *R&O*, FCC 99-13 (rel. , 1999) [Adopted Feb. 1, 1999].

II. Proceedings Initiated/Pending

TELECOMMUNICATIONS PROVIDERS (COMMON CARRIERS)

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

Removal or reduction of, or forbearance from enforcing, regulatory burdens on carriers filing for technology testing authorization. *1998 Biennial Regulatory Review—Testing New Technology,* CC Dkt No. 98-94, *NOI*, FCC 98-118 (rel. June 11, 1998).

Modify accounting rules to reduce burdens on carriers. *1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements,* CC Dkt No. 98-81, *NPRM*, FCC 98-108 (rel. June 17, 1998).

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

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

Eliminate duplicative or unnecessary common carrier reporting requirements. *1998 Biennial Regulatory Review—Review of ARMIS Reporting Requirements,* CC Dkt No. 98-117, *NPRM*, FCC 98-147 (rel. July 17, 1998).

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

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

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

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

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

Modify or eliminate Part 64 restrictions on bundling of telecommunications service with customer premises equipment. *1998 Biennial Regulatory Review—Policy and Rules Concerning the Interstate, Interexchange Marketplace/implementation of Section 254(g) of the Communications Act of 1934, as Amended/Review of the Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets,* CC Dkt Nos. 98-183 and 96-61, *NPRM*, FCC 98-258 (rel. Oct. 9, 1998).

Eliminate or streamline various rules prescribing depreciation rates for common carriers. *1998 Biennial Regulatory Review—Review of Depreciation Requirements for*

Incumbent Local Exchange Carriers, CC Dkt No. 98-137, *NPRM*, FCC 98-170 (rel. Oct. 14, 1998).

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

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

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

BROADCAST OWNERSHIP

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

OTHER

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

Streamline AM/FM radio technical rules and policies. *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules,* MM Dkt No. 98-93, *NPRM*, FCC 98-117 (rel. June 15, 1998).

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

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

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

Mr. TAUZIN. Thank you very much, Mr. Chairman.

Now I am pleased to welcome the honorable Susan Ness, FCC Commissioner. Susan, again, your written statements are part of our record. We appreciate your presentation today.

STATEMENT OF HON. SUSAN NESS

Ms. NESS. Thank you very much, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to be before you today.

The initial rulemakings required by the Telecom Act have been completed, and most of the judicial challenges to your law and to our orders are winding down, mercifully, although plenty of work remains.

Even when viewed through "green-colored" glasses, there is no denying that companies are taking advantage of the opportunities that were created by the act, and consumers are beginning to reap the benefits.

As has been mentioned, as a result of this law and other Congressional and FCC decisions, cable companies are now in fact beginning to offer telephone services in a number of markets. Wireless subscribership is substantially up, and prices are substantially down. In telephone services, new entrants have raised tens of billions of dollars in capital and are making inroads in local business and even in residential markets.

Broad-band services are rapidly being rolled out by cable companies, incumbent telcos, and new companies that are sometimes called PCLECs or DATALECs. Fixed wireless and mobile satellite services are being launched. And every day, 50,000 more Americans are using the Internet for the first time.

Hundreds of thousands of classrooms are now being connected to the information superhighway, and communities that never would have dreamed of being able to afford this service in the past are now receiving access. Broadcasters and, to some extent, cable companies are moving ahead with deployment of digital television. And nations abroad are beginning to open their markets to competition, often establishing independent agencies modeled after the FCC.

In short, we are clearly not there yet, but it is on track, with good progress. There is a lot of good news, and I think you all deserve a tremendous amount of credit for making these developments possible.

The nature and velocity of the change is stunning, and as the marketplace changes so too must the FCC. We must continue to evaluate ways in which we can be more efficient and responsive and also so that the marketplace can enjoy, for once, regulatory certainty.

Chairman Kennard's report provides an excellent foundation for that discussion, and in my written testimony I have suggested additional areas for consideration. I look forward to working together with all of you to ensure that the Commission remains efficient and responsive, and has the resources necessary to fulfill its present and future statutory obligations.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Susan Ness follows:]

PREPARED STATEMENT OF SUSAN NESS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

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

I welcome a dialogue between the Commission and our authorizing subcommittee. In particular, I am pleased to review with you our actions in implementing the Telecommunications Act of 1996, and to seek your guidance as we proceed on the course you have set based upon the principles of competition, deregulation, and universal service.

This interaction between the Commission and our oversight committee is especially valuable now, during a period of monumental change. The telecommunications and information industries are currently undergoing a transition of epic proportions. The Internet and IP technology are splintering the regulatory structures of the past. Convergence is presenting an abundance of new opportunities—and challenges—as voice, data, and video are delivered over a host of new technologies.

Recognizing an historic transition, Congress passed the Telecommunications Act of 1996. That law is working. The nature and velocity of the changes that are now underway are truly breathtaking, and although I would not recommend that the Act be reopened to a major rewrite, nonetheless a continued reassessment of both law and regulation is warranted.

Surely the most profound development of the past three years has been the rapid growth of the Internet. The third anniversary of the Telecommunications Act was not much more than a month ago, and yet in these few weeks approximately two million Americans have logged on to the Internet for the first time! E-commerce is exploding and is likely to play a major role in the economy of the 21st Century.

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

MANAGING THE TRANSITION

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

We are already well along in the development of fully competitive and unregulated markets for long distance service, information services, customer-premises equipment, and wireless services. In these areas, choice is abundant, innovation is rampant, and prices are declining.

Consider: just three years ago most residential consumers paid 20 or 25 cents a minute for a long distance call. Today, 10 cent or even lower rate plans are widely available, and special offers abound, such as all-you-can-talk pricing for weekends and free calls on Monday nights.

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

Similarly, international call prices have plummeted as countries implement their World Trade Organization market-opening commitments, and as the FCC's accounting rate policies take hold.

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

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

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

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

As we seek to accelerate the transition to competition, we need to be willing to take risks, as we did several years ago when we denied state petitions to retain price regulation of commercial mobile radio services. But we also need to be careful not to undermine basic tenets of the Telecommunications Act. Sometimes, when we hear "if only the FCC would eliminate this requirement," the requirement in question is one that Congress carefully chose as a tool to enable competition—and even told us specifically that the provision was not subject to our forbearance authority until it had first been fully implemented.

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

for cooperation and consistency that advance the national goals of competition, universal service, and deregulation. I am pleased to report that we have made considerable progress working with our state and local government colleagues in a renewed spirit of cooperation.

GUIDING PRINCIPLES

As we move forward with our implementation of the Telecommunications Act, and with an evolution in the philosophy and structure of the FCC, I am guided by certain principles. First and foremost, of course, I take my direction from the law. It is not my place to second-guess your judgments, or to be selective in deciding which provisions of the law will be enforced.

The law, however, leaves us a measure of discretion, and in exercising that discretion our principal goal should be to foster competition whenever and wherever it is practical to do so. And where competition has advanced, regulation can and should retreat. Thus, we must place greater reliance on marketplace solutions, rather than the traditional regulation of entry, exit, and prices; and on surgical intervention rather than complex rules in the case of marketplace failure. The forbearance authority which you gave us is an excellent tool.

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

In addition, government often serves best by focusing a spotlight on problems, and prodding parties to work together to design solutions. Public/private partnerships can speed the introduction of new technologies and help pave the competitive way in a global marketplace.

Consumer interests, not those of any industry player, should be paramount. The Commission should not try to pick winners or losers, either individually or by industry segment. Nor should we be tempted by short-term "fixes" that impede long-term objectives.

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

"REINVENTING" THE FCC

As the marketplace changes, so too must the FCC. The FCC must continue to evaluate ways in which we can be more efficient and responsive.

Chairman Kennard recently shared with all of us a preliminary draft of the report he filed with his hearing testimony. This report, "A New Federal Communications Commission for the 21st Century," provides an excellent contribution to the discussion. Based on my initial review, I believe that the general thrust of the report is right on target.

The report enumerates the critical functions of the FCC in a competitive marketplace. I generally agree with that assessment, and elaborate below on several of Chairman Kennard's points.

Competition and enforcement: As the marketplace becomes competitive, the emphasis increasingly should be on enforcement, rather than rulemaking. Of course, the Commission has always had enforcement responsibilities in the past, and it is not likely to abandon all rulemaking functions in the future. But as competition grows, we are reducing our prescriptive and proscriptive rules, and relying more on public information and enforcement solutions.

I firmly believe that competitive markets thrive with minimal regulation. I also agree that competitive markets will still generate disputes, both between service providers and between service providers and consumers. A separate Enforcement Bureau will help ensure that enforcement activities have the attention and resources they require.

Consumer protection and information: Consumer protection begins with information. As competition increases, so too does the potential for consumer confusion. I therefore support the proposed creation of the Public Information Bureau. Full and clear disclosure of the terms of service offerings is essential. The Commission needs to coordinate closely with state public utility commissions, state attorneys general, and the Federal Trade Commission to maximize the effectiveness of our limited resources, to ensure that consumers have the information they need, and to avoid misconduct "slipping through the cracks."

Universal service: Universal service is a major continuing responsibility of the Commission. Congress has made it clear that all Americans should reap the benefits of the communications and information revolution. In an economy that is increasingly dependent on communications and information, it is critical that society take steps to reduce the "digital divide."

We all benefit when everyone has access to telecommunications. That's why it is so important that we maintain traditional support for low-income consumers (Lifeline and Link-Up) and for consumers in high-cost areas, and that we enhance access on the part of schools, libraries, and rural health care providers.

In these endeavors, we must not inadvertently hamper the deployment of advanced telecommunications technologies. We should maintain competitive (and technological) neutrality, so that we do not preclude solutions based on wireless, satellite, or other technologies.

We also must work closely with our partners, the state commissions. Most of the subsidies that keep residential phone service affordable are in their domain, not ours. And even when dealing with those parts of the equation that are amenable to a federal solution, we need to be mindful of the need to accommodate the legitimate—but quite differing—interests of the high- and low-cost states.

Spectrum management: Management of the radio spectrum is and will continue to be another critical agency function. We must ensure that spectrum—a national resource—is used efficiently. Licenses must be distributed fairly and swiftly. Spectrum planning needs to create opportunities for multiple providers, including new entrants, as the Act envisions.

With the interests of the consumer in mind, we also need to work with the broadcast, cable, consumer electronics, computer, and content industries, to provide a smooth and consumer-friendly rollout of digital television. The marketplace—not government—will determine its ultimate success.

We also need to ensure that U.S. interests are advanced in international spectrum planning bodies. As the Commission's lead representative at the World Radio Conferences in 1995 and 1997, I have seen first-hand how spectrum decisions affect billions of dollars worth of economic opportunities for U.S. industry. We must continue to improve the planning process for international radio conferences through early high-level government participation and frequent and well-timed meetings with our trading partners to resolve differences in advance of the WRC.

Global competition: Market-opening measures are underway around the globe, spurred to a great extent by advocacy from the U.S. Greater global competition translates directly into improved communications infrastructure for citizens of many countries, but it also creates export opportunities for U.S. business. Meanwhile, U.S. consumers reap the benefits of increased foreign investment at home. The FCC has become a role model for countries establishing independent regulatory regimes to convert from monopoly to competitive communications markets abroad.

Many of the forces that are changing our markets are global in nature. Accordingly, we need not only to continue our advocacy in multilateral and bilateral negotiations but also to continue to seek lessons abroad that can profitably be applied at home.

SPECIFIC SUGGESTIONS

Subcommittee Chairman Tauzin's letter of invitation specifically requested suggestions for structural or organizational changes to the FCC. I appreciate the opportunity to participate in this discussion.

1. I strongly support Chairman Kennard's plan to seek a dialogue with all stakeholders—particularly members of Congress—before decisions are made on any structural changes beyond the creation of the Enforcement Bureau and the Public Information Bureau.

I am interested in exploring the public's views on structuring the Commission along functional lines, rather than by traditional industry segments. With service convergence, a functional structure could help stimulate innovative thinking and possibly reduce regulatory anomalies. I recognize, however, that the Communications Act provides for different treatment of these mechanisms: telephone (Title II), broadcasting and wireless services (Title III), and cable (Title VI). To avoid the pitfalls associated with thinking along industry lines, the Commission increasingly has assigned multi-bureau task forces to address major issues.

2. I believe the Commission needs to strengthen its technical resources. For many years, the Commission conducted an engineering training program. It no longer does so, and therefore is diminishing our expertise precisely as technical issues are becoming more complex. I believe we should consider reviving this program so that

we will have the expertise we need to evaluate spectrum sharing, equipment authorization, and other issues.

3. I am also concerned about the adequacy of resources for international representation. As noted above, billions of dollars worth of economic opportunity are at stake, and it is important that we continue to make the resources available to ensure that U.S. interests are adequately identified, coordinated, and advocated.

4. I further believe that we should evaluate new methods of building industry consensus. Time and again I have seen the value of parties coming together, under Commission auspices, to develop industry-driven solutions to problems. I believe it could be useful to work on ways in which such approaches might be encouraged, without the costs and delays of a full-blown APA rulemaking, the formality of an Advisory Committee, or all the due process trappings of a Negotiated Rulemaking.

5. I recommend that Congress consider legislating to reduce the prospects for forum-shopping in appeals. Too often we see industry players delay market-opening measures by challenging an FCC decision, or even a provision of the Act itself, in first one court and then another. I believe it may be more efficient, as well as more predictable, to provide that all petitions for review under 47 U.S.C. Sec. 402(a) must be filed with the U.S. Court of Appeals for the District of Columbia Circuit, as is already required for appeals filed under 47 U.S.C. Sec. 402(b).

I would welcome the opportunity to consider any other measures that might be suggested for ways in which to curtail the ability of parties to hinder or delay compliance with those orders that are intended to promote competition or protect consumers.

6. Finally, the Commission is blessed with an extraordinarily fine career staff. The Commission's ability to perform its mission is highly dependent on the expertise and diligence of hundreds of professionals. Whatever we do to streamline and refocus the Commission's activities should take into account the working conditions and *esprit de corps* that are necessary to attract and retain high-caliber employees.

CONCLUSION

Consumers are already reaping many benefits from competition resulting from past decisions by Congress and by the FCC. Yet the pace of change in communications markets is still accelerating, and care must be taken to ensure that our actions promote the goals established by Congress.

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

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

Mr. TAUZIN. Thank you very much, Madam Commissioner.

And next we are pleased to welcome the honorable Harold Furchtgott-Roth, the FCC Commissioner. I think I have the order of seniority right here. Proceed, sir.

STATEMENT OF HON. HAROLD W. FURCHTGOTT-ROTH

Mr. FURCHTGOTT-ROTH. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing. Particularly want to thank you for convincing Mr. Markey to allow this hearing to be held on such an important day of the year. It was very good of you, Mr. Markey, forbear from objecting to this date.

Mr. MARKEY. Will the gentleman yield?

Mr. FURCHTGOTT-ROTH. Yes.

Mr. MARKEY. Thank you. See, here's the thing with the Irish. We were very big in the agricultural era. Then we skipped the entire industrial age.

But, in the information age, where you can make a living just talking or communicating with words, the Irish are back. Okay?

So we celebrate today, you know, this convergence of our culture with the new technologies.

Mr. FURCHTGOTT-ROTH. Well, Mr. Markey and Chairman Tauzin, it is very good to be here. It is very good to be home, home to this committee, to this committee room that I have been in many, many times. I have a great deal of reverence for this room, a great deal of respect for this committee. I am humbled to be here.

This committee was created when communications at best meant newspapers and at worst meant shouting. It is good to know in America we still have both of those fine institutions.

This committee was created long before there was an FCC. I am hopeful that this committee will endure, that it will endure forever, and it may yet out-endure the FCC.

But the FCC has a long and proud future ahead of it as well, but it is this committee and the Constitution that it serves that is truly timeless. This committee is about interstate commerce, is about the vision of James Madison.

Originally, interstate commerce was the exception in America. Today, it is the norm.

Mere citizens have many views on what good laws and bad laws are. Everyone has their favorite stop sign that they wish the government would change. But we don't go around asking policemen to change the law. And you have everyday before you lobbyists who come through these halls, many of them my very best and closest friends, who will tell you what the good laws and what the bad laws are.

And I hope you listen to them because they are lobbyists, they are folks who are answering a very high call about trying to come up with a better America. But those individuals who are paid to lobby this committee and do it in a very fine form are not responsible for implementing the laws that this committee writes.

We before you today have the burden, the responsibility of implementing the laws that this committee drafted, that this Congress passed into law, and that the President signed.

I am humbled to be here, and I am very humbled to answer any questions you may have about how we have been implementing the law.

But I am not here, and I will never be here, to ask you to change the law. That is for people who have the luxury of being able to express their views and not have to respond to individuals in America who ask them enforce the law. I, for one, cannot do that. I cannot, at the same time, enforce the law and, at the same time, ask to have that same law changed.

I have only one request of that committee, of this committee, and that is that you be vigilant for all of the agencies that you oversee, and that you ask us simply and forcefully to follow the law as it is written.

Frankly, almost everything that has been mentioned this morning are things if this Commission could do within in the construct of the Communications Act. And I hope that you will use this authorization process—this re-authorization process—to instruct us, to advise us, to guide us in the proper implementation of the law. Help us to interpret the law that we have. Go beyond that if you will, but do not expect me to raise my voice one way or another in that debate.

Please make sure that we stay clearly within the law that we have. Most of the times we do that, but in my many statements over the past year I have from time to time noted instances where I am not sure that we have stayed simply within the law.

This committee is timeless. It will be here long after all of us are gone, and I hope that the reverence that I have for this committee is shared by all and that this committee will give us the proper instruction that the Commission needs.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Harold W. Furchtgott-Roth follows:]

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

Introduction

It is a great honor for me to testify before this Committee. It is a homecoming for me, and I see many friends among the Members and staff of this Committee.

I know this committee room well. It is a grand and stately room befitting a noble committee. Long before this room was built, this Committee was born. This Committee has seen Congresses and Administrations come and go; it has seen government agencies develop, evolve, and occasionally cease operations; it has seen the history of this Nation march before it.

In many ways, this is the Committee of Madison, the Committee of interstate commerce, the Committee that takes its charge directly from the Constitution, the Committee that addresses that which holds this Nation together.

Various causes have ebbed and flowed in the course of American history. One concept that has consistently grown, however, is the centrality of interstate commerce to American life. Two centuries ago, interstate commerce was the exception rather than the rule; today, interstate commerce rules. With it comes substantial federal jurisdiction for regulation.

Regulation of interstate commerce is a weighty responsibility, one that this Committee oversees daily. Interstate commerce can be regulated clearly under federal statutes in open commercial markets in which property rights and contracts are enforced, and in which the market forces of supply and demand are allowed to blossom for the benefit of the American consumer. Alternatively, interstate commerce can be over-regulated to the detriment of all Americans by failing to enforce contract and property rights, by creating disincentives for investment, and by allowing the development of markets that are dictated by a few individuals who happen to be government regulators rather than by all individuals who happen to participate in a market.

I come before you as a Commissioner of an independent agency, the Federal Communications Commission. Most of the authority that the Commission exercises is to regulate interstate commerce, in this instance, communications. The regulation of interstate commerce is, of course, exclusively Congressional authority under the Constitution. It is this Committee, the Committee on Commerce, that has primary jurisdiction over the FCC.

The FCC is not an explicit part of the Constitution. We should exercise with great caution the limited authority that Congress has bestowed upon us. Three generations ago, there was no FCC. The future of the FCC is at the mercy and discretion of Congress. Perhaps future generations will know us directly; or perhaps we will be consigned to footnotes in history. Congress in general, and this Committee in particular, hold the keys to that future.

We at the FCC cannot control our ultimate institutional destiny, but we can control our fate one day at a time. If in all of our daily actions at the Commission, we are faithful to the Communications Act and other statutes and interpret them narrowly as written, we will bring honor to this agency, honor to the Committee that drafted communications legislation, honor to the Congress that passed that legislation, honor to the Presidents that signed the pieces of legislation into laws, and honor to the American public. If we stray from the Act, if we exceed our authority in some areas, and if we fail to fulfill our obligations in others, we bring shame to ourselves and to others.

An Independent Agency

The FCC is known as independent agency. The word "independent" refers to its independence from the executive branch. Some observers particularly note the inability of the President to remove a Commissioner at will. I think, more importantly, that the independence stems from the inability of Congress to delegate to the executive branch Congressional powers, in this case the power to regulate interstate commerce.

This Committee and this Congress make federal policy about interstate commerce and about telecommunications. The Executive Branch cannot and does not. The FCC cannot and does not.

For these reasons, it is important for this agency to look to Congress, and to this Committee in particular, for guidance: guidance on how to interpret the statutes drafted and championed by this Committee; guidance on how to regulate interstate commerce in a manner consistent with federal statutes.

Importance of Authorization Legislation

The Commerce Committee oversees and directs the FCC in many manners. There is correspondence from Members to the Commission. The Committee may seek information or reports from the Commission. The Committee holds oversight hearings as it is doing today. The Committee marks up legislation affecting this agency, including the landmark Telecommunications Act of 1996. The Committee may write annual authorization legislation providing more detailed guidance to the Commission.

We at the FCC look to this Committee for guidance in each of these areas. Congress has only infrequently exercised its authority to pass annual authorization legislation for the FCC. Should this Committee and this Congress decide to pass such legislation this year, we at the FCC look forward to your direction, and we will follow it.

FCC Should Not Lobby Congress for Statutory Changes

Congress has vested in the FCC an extraordinary concentration of power. We draft and promulgate rules; we determine and levy fees; we administer and interpret our rules; we enforce our rules; and we adjudicate certain disputes involving our rules. We exercise this extraordinary array of powers all within the framework of our statutory authority.

As I have explained in various statements at the FCC, I do not believe that, absent an express request from Congress, making recommendations about how the law should be changed is an appropriate function for the Federal Communications Commission. The Commission is bound to take the law as Congress makes it and to implement the law objectively; yet when we criticize extant statutes, enacted by Congress and signed into law by the President, we draw that objectivity into doubt. Moreover, as a creature of Congress' delegated authority, the Commission takes it direction from that body, not the other way around.

Need for FCC to Follow the Law

It is a popular exercise in Washington to suggest what the FCC should be doing, as if our mission is some great mystery to be solved. I always have maintained, however, that the Commission simply should follow the law narrowly as written by Congress. The FCC does not make federal telecommunications policy; Congress does.

More specifically, the FCC should not rely exclusively on broad, vague statutory grants of authority that contravene specific statutory mandates. If, for example, we wish to participate in an antitrust review of proposed mergers, we should do so pursuant to our clear statutory authority under the Clayton Act. We should not review mergers based merely on our broad authority to grant license transfers in the public interest. In addition, we should use our specific authority under Sections 10 and 11 of the Communications Act to help meet Congress's twin goals "to promote competition and reduce regulation." Unfortunately, we have been both slow and reluctant to forebear from law and regulation pursuant to Section 10, and only timidly have exercised our duty to review and reduce our regulations pursuant to Section 11.

The Telecommunications Act

Both Section 10 and Section 11 came from the Telecommunications Act of 1996. This Committee played a pivotal role in creating that statute which, notwithstanding the FCC's not infrequent failures to implement it faithfully, has been successful.

Indeed, in 1995, consumers and telecommunications companies were hobbled by excessive regulation at the federal, state, and local levels. Regulation pigeon-holed companies into narrow lines of business and pigeon-holed consumers into narrow geographic markets. Regulators, not consumers, decided which companies could serve

which consumers with certain services in a giant game of "Mother May I?" The answer all too often was "No" or "Maybe in a few years."

Today, in 1999, consumers and business are less hobbled than before, thanks in large measure to the Telecommunications Act of 1996. The FCC has had an enormous task in implementing the Telecommunications Act of 1996. It has implemented many parts of the Act quite well, and—as I noted before and described in my public statements over the past 16 months—other parts not so well.

A Smaller FCC Over Time

If the Commission does its job properly in implementing Act, there will be less and less regulation over time. Indeed, it is almost inevitable that the FCC will shrink over time. Our largest and most pressing responsibilities under the Act have ended. The necessarily rigid deadlines for initial rulemakings have ended, and the Commission met all of those deadlines. Surely, the Commission does not need nearly as large a staff in the year 2000 as it did in 1996 and 1997.

Even if our staffing requirements were not decreasing, however, our likely funding resources for staffing certainly are decreasing. The FCC's staff is in the process of moving to a grand new headquarters building in Southwest Washington, DC. It is a beautiful building—but very expensive. Our leasing expenses are growing by more than 50 percent, and the cost of the move itself will be $8.7 million for each of the next 9 years. The net result is that our office expenses have increased by more than $20 million annually.

Regulatory fees levied by the FCC pursuant to Section 9 of the Communications Act can be assessed only "to cover the costs" of the services rendered by the agency. Accordingly, I believe it would be preposterously unfair to force entities regulated by the FCC and, thereby, American telecommunications users, to pay even a nickel more for this new office expense in the form of higher user fees. It simply would be impossible to show that any telecommunications user is receiving a higher quality of service as a result of the move. Consequently, the additional $20 million per year in office expenses must be borne by American taxpayers. The net result is that, unless Congress actively decides to change the law and increase the Commission budget substantially, the Commission can only afford to retain fewer employees.

No Need for Intermediary

The FCC does not need any intermediaries to communicate with Congress. The Administration, however, recently sent budget proposals under the name of the FCC to Congress. They were in fact not the submission of the FCC, but rather the sanitized, highly edited, and augmented version submitted to Congress by the Administration's Office of Management and Budget. Although it is the Administration's prerogative to submit a unified budget for all agencies, I do not believe that the Administration can speak directly on behalf of this agency.

The FCC submitted recommendations to OMB in a secret process. I dissented from those recommendations for a variety of reasons, but the recommendations proposed by the FCC were not nearly as bad as what the Administration subsequently proposed and delivered to Congress. For example, the Administration's proposal to impose spectrum taxes was simply irresponsible.

Open and Public Process

Whether it be votes on FCC budget recommendations or the Commission's internal voting procedures more generally, I do not believe this agency should keep the American people in the dark. Indeed, I believe there is an urgent need for this agency to conduct its business in public. That is the principle that underlies both the Administrative Procedure Act and the Sunshine Act. Currently, however, the FCC's internal processes are known by but a few high-priced Washington lobbyists. Why shouldn't everyone know how we conduct our business?

Reorganization

Finally, Chairman Kennard today unveils some new plans for the FCC. He is an extraordinarily bright and talented leader. I enjoy serving on the Commission with him, and I look forward to reviewing his plans.

Ultimately, the fundamental responsibility of the FCC is to follow the law narrowly as written by Congress. If the Commission fails to follow the law narrowly, no reorganization plans—no matter how well-meaning—will solve the agency's problems. If the FCC succeeds, it is not because the agency has invented a new organizational structure but, rather, because we have committed to following the law.

Mr. TAUZIN. Thank you very much, Mr. Commissioner.

And now we are pleased to welcome the honorable Michael Powell, Commissioner of the Federal Communications Commission.

Mike, again, your statement is a public record and we appreciate your coming before us.

STATEMENT OF HON. MICHAEL K. POWELL

Mr. POWELL. Thank you, Mr. Chairman, and good afternoon, Congressman Markey, and other distinguished members of the subcommittee. It is a pleasure to be here at your invitation to help the subcommittee in its consideration of FCC re-authorization. Apparently, the FCC has been an unauthorized agency since 1991, and I agree wholeheartedly that it is not wise to be driving without a license.

Although I must admit that it did not stop me when I was 15.

Nonetheless, I feel a little about re-authorization like a sinner who has arrived at the Pearly Gates and is frantically trying to convince St. Peter that I have met the 271 checklist for entry.

Before beginning any exercise to fix something, or to use Chairman Tauzin's word, to "remission" it, I think it is important to start with an examination of what we think is broken, or at least what our perception is about what is not working.

I would first like to endorse the strategic plan offered by the FCC Chairman because I think in its tone and direction it is exactly on the mark. But in response to the subcommittee's invitation, I would like to offer specific areas for exploration that I think should guide, or would be helpful in guiding your deliberations.

First, I believe the Commission needs to more clearly set out its priorities and its direction. This is a common complaint from the outside, that it is very difficult to understand what our priorities are, what direction we are heading, and often we are criticized for changing course abruptly.

I believe one vehicle for consideration, on your part, is to require the Commission, under section 4(k) of the Communications Act of 1934 in which it submits its annual report, to also set out its annual list of priorities that could be developed as an outgrowth of a year-long formal, strategic process at the Commission.

The next large area that I often hear criticism of, is the FCC is not efficient enough to meet the demands of its consumers. Clearly this is true. Mr. Huber talked about the incredible pace, the intense pace of change in this industry. I heard a telecom executive describe it the other day as "it's Moore's Law on Viagra." I suppose that captures it better than anything else.

But one important way in which you can improve the efficiency of any organization is, of course, have less to administer. And I believe that Congress properly provided two very powerful tools for doing that that have not been employed as fully as they might be.

The first of course, under section 11, is our authority under the biennial review to root out and eliminate regulations that are no longer necessary. Others have said much about that. I would also say for the record that forbearance under section 10 is a very powerful vehicle. It is well noted in my writings that I have been somewhat critical of the Commission's employment of that vehicle. And I want to point out that is less the substance or the merits of those forbearance decisions as it is the standard employed by the Commission and its exercise.

I do believe that this subcommittee and this Congress expected us to accept a much greater responsibility for ourselves validating or re-authorizing regulations in the context of a healthy, competitive market than I believe the FCC has been willing to take on thus far.

I have some specific suggestions as how the FCC ought to employ a proper burden-shifting mechanism along the lines of those used in civil rights cases, which is in my full testimony.

A second subset under operating more efficiently, which as been referred to and is referred to in the chairman's statements, the shift to enforcement. And I fully support the enforcement bureau efforts as well as our "rocket docket."

But I just want to point out that a shift to enforcement has to be more than a consolidated bureau. It has to be a change in the state of mind. It has to be a vehicle that you employ to deal with the kind of speculatory fears that are easy to conjure up in the context of a request to deregulate. I think the more we rely on enforcement, the more we can move past our speculative fears.

Fourth, many have pointed out that we are not structurally aligned to meet the market trends. Certainly we could consider functional consolidation, but I would point out, in my own view, that that may not be as productive as one might assume because of, as people have pointed out previously, the statute itself is aligned along many of these structural lines, as are the rules that we must implement. And thus we are creating consolidated bureaus that merely then have subdivisions that mimic the original bureaus. I don't know whether that won't be form over substance.

Nevertheless, it is in that context that I would guide your attention to the possible consolidation of cable, mass media, and DBS functions under a multi-channel video competition bureau, as well as possible consideration of some functions being merged between the common carrier and wireless bureaus.

As well as needing to realign our resources to where our priorities lie, I believe fervently that more of our resources need to be shifted to the common carrier functions. If I had a list of 10 things I think we need to be doing, nine of them would be the areas of common carrier and telephone regulation.

Finally, I think—second to last—I think we need to focus on duplicative functions. There are a number of areas in which the Commission engages in functions under its broad public-interest standard, as well as others, that are shared in part or whole by other regulatory agencies. There may be value to two agencies doing two things, but those roles should be complementary and supplementary rather than simply duplicative. And I think that it would be a useful function for this Commission to examine some of those functions to make a conscious decision about where those overlaps are warranted and where they are not.

And in my testimony I have some specific examples that might guide you in that regard.

Finally, there is the issue of the breadth of the agency's quasi-legislative authority. Too many disputes at the Federal Communications Commission and in the courts are over our jurisdiction, whether we are being excessively aggressive or too cautious in interpretation of statutory law.

I would point out, I believe this is a continuing tension between the 1927 act and 1934 act models and the 1996 act model. Under the 1934 model it was assumed that we would be a commission of enlightened wise men with a broad public-interest standard, free to reach wise decisions in an ever-technically changing world. It is the broadcast model.

The 1996 act tries to lay out a blueprint with highly specific provisions, detailed provisions that we are expected to implement and not question. There is a constant tension between these two models, both at the Commission and by outside parties.

I think that you have to recognize that as long as there are public-interest standards and there is that tension, it will empower regulators to self-initiate a broad range of government action without specific Congressional direction.

I do not call for the elimination of the public-interest standard by any means, but I do believe there are many fruitful areas to consider, limiting principles on that standard, which I have also written about.

Finally, to conclude, Mr. Chairman, I would just add a word of caution about an effort to hollow the agency. You have the power to cut employees, you have the power to eliminate Commissioners. I can find another job, but I will tell you what, at the end of the day you will still have applicants under this statute who will need a 271 application approved, you will still have schools and libraries that have to file for their applications for universal service funding, you will still have consumers who need redress from complaints.

I don't know that a severely diminished agency will be able to serve those more efficiently than it does now.

I thank you and welcome your questions.

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

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

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

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

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

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

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

no structured process by which the Commission formally develops and publicly reports its priorities.

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

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

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

A. Deregulation

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

A second vehicle that I believe has been under-utilized is our forbearance authority under Section 10 of the Communications Act. 47 U.S.C. § 160 (West 1998). I have criticized many of our recent decisions in which the Commission declined to forbear from our rules. The merits of those forbearance petitions have been less my concern, for reasonable minds can differ. My dissatisfaction is with the standard we apply and our analysis, which seems to place the entire burden of forbearance on the moving party. I believe Congress expected the Commission to accept more responsibility for demonstrating a continued need for regulation in the presence of a healthy, competitive market. Indeed, I believe the Commission ought to employ a burden-shifting device similar to that employed in civil rights cases.

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

B. Shift To Enforcement

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

In this regard, I applaud the Chairman's initiative to assemble under one bureau the Commission's enforcement functions. Similarly, the initiative to create an expedited complaint resolution process, dubbed "the rocket docket," is a positive step in this direction. The shift to enforcement, however, needs to be more than a consoli-

dated bureau. It needs to be a shift in thinking as well. The FCC, as a whole, must become more comfortable with enforcement as a means of regulation and must address our speculative fears about deregulation through enforcement, rather than let those fears paralyze our willingness to deregulate.

C. Need For Better Internal Process

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

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

III. THE FCC IS NOT ALIGNED STRUCTURALLY WITH MARKET TRENDS

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

The balkanized structure of the Commission makes it difficult to re-deploy employees to address urgent tasks. Attorneys currently analyzing policy issues for the Mass Media Bureau, for example, cannot easily be moved to work on issues in other bureaus, even though the subject area may be similar. Thus, even though there is a need for attorneys in the Cable Services Bureau, separation of these bureaus prevents ready reassignment of personnel. Within larger bureaus, the Commission would have the opportunity to maximize its use of employees. It could, for example, cross-train the workforce through rotations and training. In this way, the Commission could maximize employee flexibility and enhance its ability to reallocate resources to match priorities.

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

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

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

IV. ADMINISTRATION OF DUPLICATIVE FUNCTIONS

A fifth area on which Congress may choose to focus is where Commission authority overlaps with that of other government agencies. Because communications is so fundamental to virtually all human activity, there is almost always some connection

to FCC authority (no matter how tangential). Yet, the core expertise of the FCC should truly be considered in assigning to it, rather than some other agency, a central role on a given issue. While such governmental overlaps may be desirable, they at least should be complementary (or supplementary) rather than simply duplicative. A few suggested areas of inquiry are outlined below.

A. Merger Review

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

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

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

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

B. Consumer Affairs

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

C. Equal Employment Opportunity

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

D. Political Rules

Finally, I would point out that the FCC has historically administered a number of rules that are designed to affect the quality of elections. These rules are focused on the obligations of the licensee and not the candidates, but they undoubtedly are intended to shape the quality and tenor of elections. Greater involvement in this area would require a more comprehensive understanding of campaigns and existing election laws than I believe this Agency possesses. Furthermore, any extension of

such authority should be weighed against the role of the Federal Election Commission. I am uncomfortable, personally, as an un-elected regulator initiating policies and rules that affect the electoral process without specific congressional direction to do so.

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

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

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

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

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

VI. CONCLUSION

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

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

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

Thank you for your attention.

Mr. TAUZIN. Thank you very much, Commissioner Powell.

The Chair is now pleased to recognize the newest member of the Commission, Ms. Gloria Tristani, for your testimony. Ms. Tristani.

STATEMENT OF HON. GLORIA TRISTANI

Ms. TRISTANI. Thank you, Mr. Chairman. And before I begin, I'm glad you are back, Mr. Markey, because I thought I would let you know that I claim being Irish by association. I am married to an Irish man. My son's middle name is Patrick, and he has decided he may be just Patrick from now on. And I wanted to wish you a happy St. Patrick's Day.

Mr. MARKEY. Thank you. Mr. Chairman, just 1 minute. If Vito Fossella would be able to explain his political lineage, could you,

for the committee for a second? I think it would be a little bit—I think it would be surprising to the——

Mr. TAUZIN. I'm not sure we want to hear it, but go ahead.

Mr. FOSSELLA. I'm sure everyone is on the edge of their seat waiting for—well, Mr. Markey, you may know that my great-grandfather, James Aloysius O'Leary was a Democratic Congressman who served this body in the 1930's and the 1940's. So, believe it or not, Vito is an O'Leary as well.

Ms. TRISTANI. Mr. Chairman, members of the committee, thank you for this opportunity to be here today. I am pleased to report on the progress in carrying out Congress' vision that all Americans have the opportunity to share in the benefits of the telecommunications revolution. I would like to highlight a couple of areas.

Universal service. As a member of the Federal-State joint board on universal service, I supported the principal recommendations that the board made to the FCC on high-cost funding. If these recommendations are adopted, I believe consumers will benefit because local rates will be kept at affordable levels and competition will be able to take root in residential areas.

Another aspect of universal service that is particularly important to me is connecting unserved areas. I know we have talked about having wonderful connectivity in this country, but there are still areas of this country, and I can talk about Indian reservations where 30 to 50 percent of homes do not have basic telephone or any kind of communication service. I believe the Federal Government, in the interest of advancing universal service, must take a more active role in connecting all Americans.

E-Rate. I am the first to admit that the implementation of this program has not always been perfect, but the goals of the program are sound. And I am convinced that the E-Rate funds that have been recently committed to schools around the country will generate enormous social and economic benefits for the Nation in years ahead.

Broad-band deployment. Our first report on the state of broadbrand deployment under section 706 was guardedly optimistic while recognizing that it is still too early in the process. Indeed, with respect to rural and other hard-to-serve areas, I remain more guarded than optimistic. I am not yet convinced that these Americans will have access to advanced services on a reasonable and timely basis.

I believe there are two ways we can accelerate the deployment of advanced services. One is to ensure that competitors have access to the basic building blocks of advanced services that are controlled by incumbent LECs, and two is to ensure that we are not over-regulating the provision of advanced services by incumbent LECs.

Slamming. I strongly supported the rules we recently adopted to fight slamming. The highlight of our new rules is that a customer who is slammed need not pay the slammer.

Equal employment opportunity. We have proposed new broadcast EEO rules that we believe address the concerns raised by the DC Circuit in striking down the outreach portions of our previous EEO rules.

Finally, on FCC restructuring, and Mr. Chairman, I am glad and welcome that you have brought this to the table, and I look forward to a continuing dialog on this.

First, we need to become more enforcement oriented. Second, we need to continue restructuring the agency to reflect the continued convergence of technology across traditional industry lines. And third, we should initiate a top-to-bottom review to ensure that our staff is deployed in a way that reflects the agency's current priorities.

Thank you again, Mr. Chairman, members of the committee, and I look forward to answering any questions you may have.

[The prepared statement of Hon. Gloria Tristani follows:]

PREPARED STATEMENT OF GLORIA TRISTANI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Good morning Mr. Chairman and Members of the Subcommittee. I am pleased to be here today to discuss the role of the FCC as we continue to work toward the goal set forth in the Telecommunications Act of 1996 of opening telecommunications markets to competition for the benefit of all Americans.

Last year, I came before this Committee and talked about my commitment to carrying out Congress' vision that *all* Americans—rural and urban, rich and poor, minority and nonminority—have the opportunity to share in the benefits of the telecommunications revolution. I'm pleased to report that we have made some progress in the past year. I wanted to update the Committee on a couple of things we have accomplished and where we might go from here.

First and foremost is universal service. In rural states like my home state of New Mexico, universal service permits average Americans to have phone service who otherwise would not be able to afford it. Right now, we are working to ensure that universal service support does not erode as competition develops. Last summer, the FCC referred key issues involving high cost funding to the Federal-State Joint Board on Universal Service. As a member of the Joint Board, I was pleased to support the principal recommendations that the Joint Board made to the FCC last November. Among the recommendations were to move away from a strict limit of 25 percent federal funding of universal service. Instead, the Joint Board recommended that the FCC provide more than 25 percent of the support needed in cases where a state cannot reasonably bear 75 percent of the cost of universal service. If this recommendation is adopted by the FCC, I believe consumers will benefit because local rates will be kept at affordable levels, and competition will be able to take root in residential areas. I also believe that the recent work of the Universal Service Joint Board, under the leadership of my colleague Commissioner Susan Ness and Florida Commissioner Julia Johnson, demonstrates the increasingly cooperative relationship between federal and state commissioners in fulfilling Congress' goals for universal service reform.

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

I would note that many unserved areas are on Indian lands, and that Indians are among the poorest groups of Americans. Chairman Kennard has recognized this problem, and I commend his leadership on this issue. Recently, the Chairman and I held a field hearing in New Mexico where we were joined by Congresswoman Heather Wilson, a fellow New Mexican. We took testimony and visited Indian reservations to learn firsthand about the causes of this problem and some possible solutions. That field hearing marked the beginning of a real commitment in the area of telecommunications to better fulfill the federal government's trust obligation with respect to Indians living on reservations.

In addition, I would like to express my continuing support for the e-rate program. I am the first to admit that the implementation of this program has not been perfect. But the goals of the program are sound and I am convinced that the e-rate

funds that have recently been committed to schools around the country will generate enormous social and economic benefits for the nation in the years ahead.

Another area of increasing importance to all Americans is broadband deployment. Access to broadband capacity will be a crucial tool for our citizens to compete in the information economy of the 21st century. In Section 706 of the 1996 Act, Congress directed the Commission to monitor the roll-out of advanced telecommunications capability, and, if necessary, take steps to ensure that all Americans have access to such capability on a reasonable and timely basis. We recently issued our first Section 706 Report, which was guardedly optimistic about the state of broadband deployment while recognizing that it is still too early in the process to declare victory. Indeed, with respect to rural and other hard-to-serve areas, I remain more guarded than optimistic. I am not yet convinced that these Americans will have access to advanced services on a reasonable and timely basis. The next several years will be critical. As advanced services begin to become a marketplace reality in many areas of the country, we need to improve our data collection and assessment efforts to ensure that all Americans have reasonable and timely access to these services.

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

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

On the broadcast side, Equal Employment Opportunity is one of the things that we have been working on to broaden opportunities for all Americans. As the Committee is aware, this past year a panel of the U.S. Court of Appeals for the District of Columbia Circuit struck down the outreach portions of our previous EEO rules because it believed (wrongly, I think) that our rules essentially required hiring decisions based on race. We have proposed new rules to eliminate any confusion on this point and to clarify that all that the new rules would require is outreach to women and minorities, not hiring preferences. Outreach requirements simply expand the pool of candidates for consideration. They do not exclude anyone based on race or gender. Reaching out to all parts of the community would help ensure true equal opportunity—giving everyone the opportunity to participate in, own, and see themselves reflected in, the media that has such a pervasive impact on our nation's cultural and political life.

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

Although much of the Commission's work addresses the broad structure of the telecommunications industry, the actions I've drawn the most satisfaction from are those that directly improve the dally lives of average Americans. That is why I strongly supported the rules we adopted last December to combat slamming. The highlight of our new rules is that a customer who is slammed need not pay the slammer. This is good public policy for two reasons. First, allowing consumers to withhold payment from the slammer takes the profit out of slamming. That should substantially reduce the frequency of slamming. Second, allowing a slammed customer to withhold payment compensates the slamming victim for the trouble and aggravation of being slammed. I hope and expect that these new rules, combined with our aggressive enforcement efforts against slammers, will dramatically reduce the frequency with which consumers are slammed.

Another consumer issue that I've been intensely interested in is the V-chip. This is the year that the V-chip will finally become a reality in the lives of average Americans. By July I of this year, half of the new television models with screens thirteen inches or larger must have a V-chip installed. By January 1, 2000, all such sets

must have a V-chip. This will empower parents to protect their children from material that they deem harmful to their children. I commend you, Mr. Chairman, for helping to forge a consensus on a useful ratings system, as well as Congressman Markey, for his long-time leadership in this area. You have given parents an important tool to help them raise their children even when they cannot monitor what their children are watching.

Now, I'd like to turn to the specific issue you asked us to address, Mr. Chairman—the restructuring of the FCC. I applaud your efforts, Mr. Chairman, to take a fresh look at the FCC from the ground up. We should not fear such a review; if we are doing our job, we should welcome it. We are fortunate at the Commission to have a tremendously talented and dedicated staff. We owe it to them, we owe it to you, and, most importantly, we owe it to the American people, to create an FCC that is as smart and efficient as possible. I do not pretend to have all of the answers as I sit here today, but I do have a few thoughts that I'd like to share.

First, I agree with those who say that we need to become more enforcement-oriented. That is, we need to impose fewer rules that burden all regulatees up front—the good actors and the bad actors alike—and develop the restraint to step in only when a problem emerges. Under Chairman Kennard's leadership, I'm pleased that we have already been moving in that direction. In the mass media area, for instance, we are substantially reducing the amount of paper that broadcasters must file, and instead are relying on the wider use of compliance certifications and a program of random audits to deter abuse. To make this system work, we need to ensure that bad actors, when they are identified, are subject to swift, certain and consistent punishment.

Second, we need to rethink the way the agency is structured. As the industries we regulate continue to advance and converge, we have to continually ask ourselves whether our organizational structure still makes sense. Chairman Kennard has taken some steps in this regard with the planned consolidation of currently dispersed functions into new Enforcement and Public Information Bureaus. I fully support those efforts and hope to see similar efforts to restructure the Commission in other areas that cut across traditional jurisdictional lines.

Third, given that the mix of expertise needed by the Commission changes over time, we need to make certain that our staff is deployed in a manner that reflects the agency's current priorities. If there are subgroups within the agency that were formed to address a particular need that may have dissipated, we should reassign that personnel to the many areas within the Commission that are understaffed. There is no rule that says that an agency subgroup, once created, can never be disbanded. I do not have any particular subgroups in mind, but I believe that now is a good time for a top-to-bottom review. Our staff is too valuable to allocate them in a way that fails to maximize their ability to contribute to the agency's mission.

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

Mr. TAUZIN. Thank you very much, Commissioner Tristani.

The Chair now recognizes himself and will recognize members in order.

First of all, Mr. Kennard, I am pleased that you accepted our invitation to literally describe an FCC for this future that Mr. Huber and others have been predicting for us.

You mentioned three missions of the agency as you see it going forward, consumer protection, the provision of universal service, and spectrum management. I noticed you did not mention, although your statement talks about incentivizing competition. Where does that lie in your areas of priority?

Mr. KENNARD. Well, I think it should be all-pervasive. I think that the act that you wrote in 1996 clearly made competition the organizing principle of our law and policy. And in everything we do, we should always promote competition first and foremost. I think that this is fundamental and paramount.

Mr. TAUZIN. Obviously, this gets into the issue of whether the agency remains a regulatory agency or moves successfully into an enforcement-agency role, the question of how fast and how efficiently we can build competitive markets. But I guess the question is, how long do you think that takes? Is this a 5-year plan, a 10-

year effort? When do we reach a stage where, in your opinion—I realize everyone has their own crystal ball on this—where the agency can be less relied upon regulatory initiatives and more reliant upon simply its enforcement authority to police against bad behavior in a competitive marketplace.

Mr. KENNARD. Well, I think it has already happened in some areas. You see it in the wireless area, for example, where we have had marked competition in wireless communication in this country. The Commission been able to deregulate in some fairly significant ways.

Forbearance from local number portability is a good recent example of that. In the long-distance marketplace, for example, as we saw more and more competition over the last decade or so, the FCC has consistently deregulated, de-tariffed in that area. In the international satellite area, we have a record of having eased off of regulation as we have seen more competition.

The real crux of the matter is making sure that we are focusing our attention on what are the remaining bottleneck facilities that need to be opened up to competition, and that is the prerequisite to deregulation.

Mr. TAUZIN. I want you comment directly upon Mr. Huber's concern. It is one I hear a lot, and one we think is worthy of our consideration as we move forward, and that is that the Commission has the power under the law to define a set of regulatory rulemaking to a class of service just depending upon what you call that provider. How do you react to that concern?

Mr. KENNARD. You know, with all respect to Mr. Huber, I think the point was a little bit overstated because——

Mr. TAUZIN. Well, give me your take on it.

Mr. KENNARD. Okay. If you look in Title I of the act for example, the Congress set forth pretty clearly some of the definitions defining telecommunications service providers, information services. We are bound by those definitions. And so, clearly, there are some areas in the act where we don't have freedom to just define what is, what service fits within what particular definition.

But that being said, I think that Mr. Huber's point is well taken that our overarching goal should be to promote more competition and eliminate barriers where we have regulatory authority to do it.

Mr. TAUZIN. But, Bill, doesn't the mere fact that we are moving into a digital age, where communications, they are all going to look the same—visual, telephony, and data, and—it's all going to be in the same screen. Doesn't that itself lead to the conclusion that, depending upon what you call the facility, it is subject to different regulatory authorities and different regulations. Isn't that the crux of the problem here?

Mr. KENNARD. My point is, is that some of that is in the statute. I mean some of these companies——

Mr. TAUZIN. So we may have to change the statute.

Mr. KENNARD. I mean, some of these companies are providing these services coming from different regulatory heritages.

Mr. TAUZIN. Yes.

Mr. KENNARD. From cable under Title VI and telephone is under Title II. But the one point that I would have to take issue with Mr. Huber on is that on advanced services. He made the point that

what we should be doing is completely deregulating the provision of broad-band services. And I think that certainly should be the goal, but we also have to recognize that in many cases the provision of those services do require the use of central facilities: the copper wire into the home. And the act that you wrote very clearly addressed that issue and that is why we are working hard to open up that copper wire to competition.

Mr. TAUZIN. With the indulgence of the committee, and this will be my last question, I would each of you to quickly respond. The chairman has outlined his three missions for a new FCC. I just recited them for you. And, Harold, I know you don't like to give us advice until we ask you, so I am asking you now: If each of you could give me your top three, four missions of an FCC in a world of competitive marketplace as opposed to the 1930's world of monopoly, regulated marketplaces, starting with Commissioner Ness.

Ms. NESS. Thank you, Mr. Chairman. Certainly one set of priorities involves ensuring that competition does, in fact, take place and that abuses of market power are addressed where there are complaints that are filed. That's the enforcement side.

Ensuring that universal service is afforded to all consumers throughout this country, is another extraordinarily important goal of the act and one that we should continue to work on.

Spectrum management is also critical. We need to make sure that the commercial uses of the band are in fact taken care of expeditiously, that we work with our colleagues abroad to make sure that all of the services are able to see the light of day. So that is a very important mission.

Ensuring that there is no interference, or that interference is minimized, in the spectrum is extremely important as well.

So I see all of those pieces and then——

Mr. TAUZIN. So you basically endorse Chairman Kennard?

Ms. NESS. Yes, I do.

Mr. TAUZIN. Commissioner Furchtgott-Roth, again, put on your thinking cap. You are not a member of the committee or Commission. You are just that good citizen out there. What should he Commission be doing in the future?

Mr. FURCHTGOTT-ROTH. Mr. Chairman, I believe under section 5 of the act the Commission has the authority to organize its staff in any manner that it sees fit. I have not yet finished reviewing the chairman's proposals, but I think that there are any number of ways that the Commission could be organized that would make sense.

If you look around, the hundreds of Federal agencies, there is no single way in which they are organized. They each have different organizational structures, organizational structures that change periodically. In some cases, the organizational structure is statutory and in some cases it is not. In the case of the FCC, it is not statutory.

And I think if you look at the different agencies around Washington, the ones that are successful, that you may consider to be successful, I'm not sure you could attribute its success to organizational structure. And the ones that are not successful I'm not sure that you could attribute that to organizational structure.

I believe organizational structure is an internal matter for the Commission. I look forward to working with Chairman Kennard and reviewing his plan, and to the extent it makes sense, I will be very happy to——

Mr. TAUZIN. Assuming it's reorganized, what's the new mission of the agency?

Mr. FURCHTGOTT-ROTH. The mission of the agency is very simple. It is to follow the laws as written. You know, I don't think we can distill that into any set of principles, into anything beyond saying we implement the law. We cannot give added weight to some section of the act and lesser weight to other sections, Mr. Chairman.

I have a very simple mind about this. And you know, it's a good thing I'm not a lawyer.

Mr. TAUZIN. Commissioner Powell, what's the new mission of the new FCC?

Mr. POWELL. Mr. Chairman, I think first and foremost, the Commission has to continue to serve out its role set forth in the 1996 act, of transitioning the legacies that we inherit out of its current regulatory structure and all of the assumptions that go with that: the technological assumptions, the regulatory assumptions, the tools and devices we use to regulate them.

A perfect example would be data information which doesn't lend itself as much to the per-minute kind of pricing vehicles we have used historically.

I think, first and foremost, we are in the messy business of transitioning the legacies out. Where we get focused on competition though is as we get those things out the door, we have to hesitate as those things create newer realities and new environments and the temptation to want to tinker in their migration.

I believe competition is not something you manage, or that you "master chef" for the public, it's a replacement for us as the decisionmaker. It will make the decisions about the highest and best uses as dialog between consumers and private firms. But I would point out that I think we need to become increasingly focused on what I would call innovation policy. Innovation is what is driving these markets, more than our classic, tired versions of price and choice regulation. And I think deregulation has to be the central vehicle in innovation because I think competition has proven to be the superior vehicle for innovative economies.

Second, I would agree with the Chairman and Commissioner Ness, as long as it is the policy of the United States that spectrum is a resource that is owned by the Government, there will be a role for someone, us or someone else, in the management and issuance of the spectrum.

But I will point out that shouldn't be the end of the question. There are many advances in thinking about what you can do with spectrum that are more consistent with market dynamics. And I think that is what Mr. Huber was attempting to suggest, that some versions of pricing, spectrum flexibility that allow quicker and more timely, more efficient uses of spectrum rather than coming in to get permission could be that.

And finally, I think, as everybody would allude to, there is always a residual of consumer protection and affairs that government would never want to abdicate. If we thought mobile phones were

frying your brain, I think everyone, no matter the truest free-marketer, would want somebody to do something about that.

But I think there is a spectrum of consumer protection that can quickly cross over from core protection of our consumers' health, safety, and welfare into things that are the micro-managements of markets, and I think we have to be careful of where that line is. I personally believe that the high water mark in the middle is antitrust enforcement for anti-competitive effects.

But when you start heading on the other side of the spectrum toward the right price, the right quality, the right et cetera, et cetera, you are in another world I think.

Mr. TAUZIN. Thank you very much. And finally, Commissioner Tristani.

Ms. TRISTANI. I'm going to agree with something my fellow Commissioner, Furchtgott-Roth, said. And I believe the new mission is to implement the 1996 act as you wrote it, competition and universal service.

And Mr. Markey reminded us at the beginning of this hearing that we do have the finest communications in the world, and still envied by everybody else. And we need to make sure that it continues to be the finest and is accessible as it has been to most Americans.

Mr. TAUZIN. Thank you very much. Mr. Markey.

Mr. MARKEY. Thank you. My district is half Irish and half Italian, and my greatest fear is that I would ever have to run against someone who could appeal to someone whose name started with O and ended with O.

And it is all combined in Vito Fossella over there.

Mr. TAUZIN. Would the gentleman yield?

Mr. MARKEY. You bet.

Mr. TAUZIN. Is the new phrase "Oh forget about it"?

Mr. FOSSELLA. Just for today, Mr. Chairman.

Mr. MARKEY. You know, the irony of the cellular industry—if someone could put the wireless chart back up over here—was that when this committee back in 1993 moved 200 megahertz over for the PCS revolution, one of the things that I wanted and that ultimately the FCC put on the books as a rule was that neither of the two incumbents, cause as you remember we gave away the first two licenses back in the early 1980's, neither of the two incumbents would be able to bid for the third, fourth, fifth, and sixth licenses in their marketplace.

And so because of Federal regulation, Federal law, we created this very competitive marketplace with five and six competitors in each marketplace with rapid technological change, geometric plummeting of pricing, that had not happened from 1981 all the way up to 1993 and 1994. It was only when the Government created a policy which wouldn't allow the incumbents to consolidate. And so it is ironic now that the industry, many in the industry, are now arguing that there should be consolidation which should be allowed, that there should be a lifting of the caps in terms of what would be permitted, in terms of any individual marketplace.

And I have, without question, great concerns about that because that is a success story. And that is what we should be looking for in every other marketplace.

I would like to discuss, if I could, with the Commission how to make wireless more fungible as a service to and competitive to the local loop.

And I would like you, Mr. Chairman, and the other Commissioners to give me your views on when it might be possible for us to move to, to deal with the issue of calling-party-pays or with number portability so that we can add that additional revolution to this wireless phenomenon so people can keep their cell phone on all day long with a number which is fungible.

Mr. KENNARD. Certainly. I think we are—I am very encouraged by what is happening in the wireless industry because we are seeing the price points in wireless declining to a point where we may well see some people turning off their wireline phones and picking up the wireless phones. Some of the flat-rate pricing plans that we are seeing are very encouraging.

Calling-party-pays, I think, may also hold a lot of promise in expediting competition in wireless. This is on the, certainly on the front burner of the Commission's agenda. I believe that it is time for the FCC to take up the issue of calling-party-pays. We have to work through a lot of the difficult policy issues to implement calling-party-pays in the country, but it is time to do it. And I am fully supportive of moving ahead with that.

Mr. MARKEY. Any other Commissioners wish to deal with that calling-party-pays issue, especially?

Ms. TRISTANI. I would agree with the chairman.

Mr. MARKEY. Now here's another irony, which would be that the industry, that is the cable industry, fought the DBS revolution. They fought the program access provision. Now, of course, they turn and use the DBS revolution as the argument that there should be complete deregulation of their industry.

But, if this committee hadn't acted, they wouldn't have that as an opportunity. That is, that there would be no competition, which could have emerged absent the Congress and the FCC having acted. And again, I just want to continue to point out that a lot of what we are saying, and Mr. Huber documented it quite well, this rapid expansion of technology choices for consumers is as a result of what has happened on this committee.

And I have one final question, if I can. One of the complaints that new competitors are bringing to us is that they are thwarted in providing competing services in multiple-dwelling units, such as apartment buildings, where a consumer may want video or other telecommunications services because they can't get sufficient access.

Obviously, with cable rates being deregulated, we want consumers to get the chance to choose alternatives if they can and want to.

How can the Commission help us with this bottleneck?

Mr. KENNARD. I think you put your finger on a very important challenge in promoting competition, particularly at the residential service level. I look forward to working with you, Mr. Markey, and you, Chairman Tauzin, on your efforts to revisit the law in so far as you would like to move more aggressively on the inside wiring front. I think that that is, like the last mile, that is one of the—it is really the last few feet of competition. And it is a very impor-

tant few feet. And I think your efforts to look at statutory approaches to changing that is very productive, and I offer any assistance that we at the Commission could do.

Mr. MARKEY. And I would like, Mr. Chairman if I can briefly, there is an interview with the CEO of Bell South in USA Today on March 1st, and a question to him is, "Do you detect a change in attitude at the FCC?" And his answer was, "The working environment is as good as I have seen it over the last 3 years. There has been a great deal of changeover in staff, the FCC seems to be working much harder under Chairman William Kennard's leadership to define specifically what the requirements are for the local Bell companies to enter the long-distance market."

I want to congratulate you, Mr. Chairman, and the rest of the Commissioners for creating an environment that would elicit a comment of that nature from the chairman of Bell South.

Thank you very much.

Mr. TAUZIN. They are still trying to get a permit approved. I don't blame him for saying that.

I thank the gentleman. Let me point out for all of you that we have already scheduled in April a hearing on the inside wiring issue. And I want to thank you, Mr. Kennard, for your offer of assistance. We are going to need all your advices, including you Harold, on how to make some good policy. And we welcome your comments as we move forward.

The Chair is pleased to welcome the vice chairman of the committee, Mr. Oxley, for a question.

Mr. OXLEY. Thank you, Mr. Chairman. Let me follow up if I can on my opening statement and in particular on some responses that you have had. As you know, Chairman Kennard, I quoted you to say that we need to recognize that we are dealing with statutes that really haven't dealt with convergence. I think that is obviously a true statement and even reflects on the 1996 act, even though I think we have made some progress in that regard. And you also talked about how the FCC would look different in 5 years. And I think all of us would applaud that.

The real question is, how do we get from here to there? And can we do it—let me just ask you this: Could you do it without legislation?

Mr. KENNARD. I think we must proceed to do all we can without legislation, but certainly we look forward to working with you on changes that might even advance competition more and help the agency work even better.

Mr. OXLEY. Well, you are in many respects bound by statutes that don't recognize the changes that have taken place in the marketplace.

Mr. KENNARD. Well, that is right. And I guess the point I am trying to make is that we would certainly welcome you to address this issue of convergence, legislatively, because the total solution will have to come legislatively. But I want you to understand that we are not going to wait. We will do everything we can in the interim to advance a pro-competitive agenda.

Mr. OXLEY. Do any other Commissioners have a comment in that regard?

Let me, then, move on. The term universal service has been used quite a bit. Ms. Ness and others spoke of universal service. Will the definition of universal service change as technologies and the markets change? If, in fact, universal service changes, is it going to be changed by the FCC? Is it going to be changed by the Congress? Is it is going to be changed by the marketplace? Will what we consider the standard of POTS, plain old telephone service, essentially being universal service, will that change? How rapidly will it change? And how do we adjust as policymakers to that potential inevitability?

Mr. KENNARD. Well, Mr. Oxley, I think that some of these issues were clearly contemplated in the act. In section 254 of the 1996 act, I believe Congress clearly contemplated that universal service would be an evolving concept and that we would continue to update it as technology changes. And we certainly will follow the statue in that regard.

But I think that one thing that we could certainly do immediately is to do everything we can to ensure that wireless providers are part of the universal service dynamic because we do know that in many rural, high-cost, low-density areas, wireless is providing solutions to the universal service conundrum. And we ought to be doing everything we can to promote universal service support to wireless companies and satellite companies if they can provide services most efficiently in those remote areas.

Mr. OXLEY. Well that then raises the question of how you pay for it and who pays for it and how you structure or, restructure essentially, the universal service fund. How soon is that coming? How soon does it have to come?

And, let me back up a little bit, in the 1996 act, there was a lot of debate, there were some folks on this committee that wanted to define universal service. We, I think, thankfully, avoided that conundrum and left, essentially, that section relatively amorphous. I don't think we really nailed it down, nor should we have. But where are we then? And what's going to happen? Universal service is a big deal.

Mr. KENNARD. It is.

Mr. OXLEY. It is a big deal for us. It is a big deal for the carriers. It is a big deal for the consumer. I'd like to just ask each one of you where you see this process going in your best judgment.

Mr. KENNARD. We are working very hard on universal service issues at the FCC. The FCC in 1997, spring of 1997, issued the first major order implementing the universal service provisions of the act. This Commission then turned its attention to completing that task.

We learned very early on that we need really extensive engagement and input from our colleagues in the States to come up a comprehensive reform of universal service.

So we convened a joint board of Federal and State Commissioners under the leadership of Commissioner Ness, which provided us some very useful recommendations which the Commission is considering now. We hope to complete our review of universal service this summer.

Mr. OXLEY. Other comments from any of the Commissioners? Ms. Ness.

Ms. NESS. Thank you. Universal service has a number of component parts to it. And we are trying to work through these. But I want to assure this committee that all pieces of universal service are in place as provided under the act. What we are trying to do now is carry through the changes that need to take place as competition comes into the marketplace.

In other words, today there is a high-cost fund that is providing for subsidies in the high-cost areas. Low-income consumers are getting the benefit of modifications that we made to those programs. Schools and libraries funding is in place, and with rural health care we are working through some start up issues but there's a program there.

The issues are very complicated, and as Chairman Kennard mentioned, they involve a partnership with the States. Most of the implicit subsidies that support universal service are at the State level and are controlled by the State Commissions. So we need to work with our State colleagues to ensure that there is adequate funding in the high-cost areas that can come from the Federal side, but there is a limit to the amount the Federal side can handle. We need to work through a whole host of issues, including revision of access charges or access reform, to make this into a composite that's going to work for all consumers so that we also do not see any rates going up for consumers. It is a very important piece of this puzzle.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Oxley. The Chair recognizes the gentleman from Michigan, Mr. Dingell, for a round of questions.

Mr. DINGELL. My questions of the Chair——

Mr. TAUZIN. What we plan to do is, if the gentleman will complete his round, if the Commission—I'm sorry——

Mr. DINGELL. What were the wishes of the Chair? Mr. Chairman, I will go now if it be your wish or do later.

Mr. TAUZIN. I would hope that the gentleman would proceed now.

Mr. DINGELL. Then I shall do so.

Mr. TAUZIN. And then, but let me make an announcement, if it is acceptable to the witnesses and to the committee. Perhaps after Mr. Dingell completes his round that we can take a 40-, 45-minute break. That is why I am asking your thoughts on it. I suspect this may go on a little while, and, Mr. Powell, we have been here before where we kept you sitting here a long, long time.

Mr. POWELL. Got to let me go to the bathroom.

Mr. TAUZIN. That's what my point is.

I remember the last time we did this, it went on a long time. With your indulgence, I would like to proceed with maybe a 40-minute break. Would that be acceptable to everyone?

Mr. KENNARD. It would be fine with me, Mr. Chairman.

Mr. TAUZIN. All right, let's do that. Mr. Dingell, you are recognized at this time.

Mr. DINGELL. Mr. Chairman, thank you. Chairman Kennard, under section 254 of the Telecom Act, the FCC was required to establish within 15 months of the date of enactment a specific timetable for fully implementing a universal service fund. That was to be done by May 8, 1997. Is that correct?

Mr. KENNARD. Yes.

Mr. DINGELL. And it has not been done. Is that correct?

Mr. KENNARD. By that date, Mr. Dingell, we did issue a universal service order which established a timetable for completing the universal service reform. Yes.

Mr. DINGELL. You were supposed, however, to implement a universal service fund. That is not laying out a timetable. That is implementation. So you have not done it. Very well.

Now, initially, the December 1997 date was postponed until December 1998, which was in turn postponed to July 1, 1999. I believe the reason for this is that the FCC cannot agree on a model to quantify how much support is needed for this high-cost fund. Is that correct?

Mr. KENNARD. It is not exactly correct, Mr. Dingell.

Mr. DINGELL. What is correct?

Mr. KENNARD. On the timetable, what we did is, we came up with the universal service order in May 1997. It would not have been prudent for us to have completed all of universal service reform at that time without the kind of extensive input and engagement that we needed with our colleagues in the States.

And, as I would reiterate what Commissioner Ness said, it is important to recognize that we do have a sufficient universal service support system in place. This is a question of updating it for a more competitive marketplace for the future.

Mr. DINGELL. Well, I think this brings it down to the point that you have not yet constructed the model of what the universal service fund is supposed to do, how much money will be coming in, how much money will be going out as of this moment. Have you?

Mr. KENNARD. That process is ongoing as we speak. Yes.

Mr. DINGELL. But it is not done?

Mr. KENNARD. Correct.

Mr. DINGELL. And yet, it is fair to note that you are now allowing long-distance companies to proceed, to move forward, to decide whether they are going to pocket the lower access charges, whether they are going to move them back to consumers, or whether they are going to dissipate them in other ways. Is that not so?

Mr. KENNARD. Well, I am not quite sure what you mean by that, Mr. Dingell.

Mr. DINGELL. I mean that you have done nothing to assure that the long-distance companies address either the problem of providing enough service at low-enough cost or whether there is enough money in the access fund to assure that there are low-cost services afforded to the needy categories of users that the Congress intended would be served by that. The result of this is that there is a strong possibility that the fund will be dissipated by being transferred out of the fund into the pockets and the hands of the long-distance carriers.

The practical result of this will be that those moneys will be dissipated and, at the end of which time, there may be no money in that particular fund to address the needs and concerns of the residential users, the local service users, who are supposed to be the beneficiaries of that fund.

Now deny that if you please.

Mr. KENNARD. I will. That has not happened, Mr. Dingell.

Mr. DINGELL. But you don't know whether it will or will not happen, do you? You have completed neither modeling nor have you written any orders on this matter.

Mr. KENNARD. The reason why we are proceeding in a very deliberate way in working closely with our colleagues in the States is that we want to prevent that very thing from happening so that we can protect consumers.

Mr. DINGELL. Now are you able to sit there and tell me that this will not happen?

Mr. KENNARD. No. I am telling you that it will not happen.

Mr. DINGELL. So you cannot tell me that. You are then in the position of sitting idly by, allowing these moneys to be returned to the long-distance carriers with a fairly assurance that you don't know what is happening. So you cannot sit there and tell me, with any degree assurance, that these moneys are not going to be turned over to the long-distance carriers with the result that the local service, particularly the residential users and others, will find at the appropriate time there is no money to meet the claims that the Congress wants them to have on that fund in terms of assuring low-cost service being readily available to all of the inner-city users and the rural users, who were supposed to be the beneficiaries of that fund.

Mr. KENNARD. Actually, the access charge revenue is flowing not to the long-distance companies, it is flowing to the local companies for the purposes of—some of which is being used to provide universal service.

Mr. DINGELL. There is a subsidy in access charges, is there not?

Mr. KENNARD. Yes. And we are determining the precise amount of that subsidy that goes to universal service support.

Mr. DINGELL. And that is currently supposed to be used to provide universal service at affordable costs to inner-city users, residential users, and to high-cost users in rural areas. Is that not so?

Mr. KENNARD. Well, some portion of it. Therein lies the debate.

Mr. DINGELL. But unfortunately you sit there in sublime ignorance of what that amount might be. You don't have any idea, and you don't have any way of telling us what is the amount of that subsidy, what should be the amount of that subsidy, how the changes that are going on with regard to the use of that subsidy will impact either the inner-city residential users or the high-cost rural users.

Mr. KENNARD. Well, Mr. Dingell, it would be irresponsible for me to make up a number and tell you that that is what it is because it is an important number. And we have to make sure that it is developed in a deliberate and comprehensive way, working with our State colleagues.

Mr. DINGELL. So you don't know the amount but you propose—you are not contemplating doing automatic reductions in July?

Mr. KENNARD. No.

Mr. DINGELL. It has been widely reported that you intend to do that.

Mr. KENNARD. Well, we are——

Mr. DINGELL. That you intend to do that not just this July, but annually.

Mr. KENNARD. Well, you are going back to the access——

Mr. DINGELL. And to do so in blithe ignorance of what the impact of that is or what the amounts of money involved might be or who and how they will be impacted.

Mr. KENNARD. Mr. Dingell, nobody in this room, in fact, nobody in the country to my knowledge, knows exactly what amount of access is devoted to universal service. It is a complex question. That's why we are working hard to develop the models which will answer that question.

Mr. DINGELL. Well, explain to me, since you don't know the amount of the subsidies and the access charges and the impact of this action, why should you be proceeding now toward reducing these access charges and helping the long-distance carriers who have no responsibility to subsidize the people that it was the Congress' intent would be subsidized?

Mr. KENNARD. I am certainly not interested in proceeding with access reform to help the long-distance industry.

Mr. DINGELL. That will be the practical effect, however.

Mr. KENNARD. Not necessarily. No, no, not necessarily. Access reduction should flow to consumers.

Mr. DINGELL. It is going to be the practical effect because you can't tell us how this money is going to flow, how much money there is, or what the impact is going to be on the different persons who have claims on that fund.

So you are proceeding blithely toward dissipating this money not knowing what is going to be the impact on the inner-city residential user or the high-cost rural user.

Mr. KENNARD. I don't believe I am, Mr. Dingell. And frankly, I don't think my Commissioners would support a vote if we didn't determine what those numbers were in a responsible way.

Mr. DINGELL. Well, if you don't know by July, are you going to proceed to move forward, to do the annual reduction?

Mr. KENNARD. I am going to work on the access restructuring in tandem with the universal service proceedings and how they are coordinated.

Mr. DINGELL. That does not answer the question. Are you going to proceed if you don't have the answers to the questions I have been asking about how this change will impact the inner-city residential user and the high-cost rural user?

Mr. KENNARD. Well, we hope to have these answers by the summer, and we will proceed when we have the answers.

Mr. DINGELL. Will you have the answers by the summer?

Mr. KENNARD. We hope to have the answers by the summer.

Mr. DINGELL. If you do not have these answers, will you proceed?

Mr. KENNARD. It would be difficult to proceed if we didn't have the answers.

Mr. DINGELL. I think you should anticipate being held to that statement at some future time.

Mr. TAUZIN. The Chair would interrupt. What was the answer? Are you proceeding or not? This may be difficult, but you didn't say whether you would or not. I think this committee would like an answer.

Mr. DINGELL. The answer is he doesn't know.

Mr. TAUZIN. Do you know?

Mr. KENNARD. It is a complicated question. The X factor does kick in in July based on the productivity of the local exchange carriers. That is correct. But universal service reform is proceeding in tandem, we are working hard to develop the actual numbers, the actual amount of universal service support which is embedded in access, and we will work on that number and come up with an access reform plan that works in tandem with that.

Mr. DINGELL. Mr. Chairman, would you permit—this is a wonderful answer, and I am enjoying. And if I had more time I would probably enjoy it more. The fact of the matter is that it is not responsive.

Mr. TAUZIN. The Chair has extended the gentleman's time, and, without objection, the Chair will extend it for another minute or 2.

Mr. DINGELL. The X factor kicks in July, does it not?

Mr. KENNARD. Yes.

Mr. DINGELL. So aren't we well served to get an answer to the questions now before we proceed? Then get the X factor just as soon as we can. Then decide what it is we ought to do about this matter. So that you know that you are not dissipating funds. May very well be that you are not, but you can't sit here and tell me you are not. So why are we not waiting until we have the answers to the question before we proceed?

Mr. KENNARD. What we don't want to do, is do anything that will jeopardize universal service support.

Mr. DINGELL. That is precisely the point I make. Yet you are blindly continuing without the vaguest idea of whether or not you are going to impair this fund or not.

Mr. KENNARD. That will not happen, Mr. Dingell. We will not impair universal service.

Mr. DINGELL. I have dealt with folks for years who have sat in the well and told me, trust me. And way back when I was young and dumb and green, I did. But I have gotten smarter.

Reed Hunt moved exactly the opposite direction. Did he not? He increased the X factor. And he didn't even know whether it was in the subsidy or not. Did he?

Mr. KENNARD. I can't answer that question now.

Mr. DINGELL. Are you going to repeat, replicate his error? I wonder if the other Commissioners have a comment that they would like to make——

Mr. TAUZIN. The Chair will ask, yes, if any of the other Commissioners wish to respond. Any of the other Commissioners want to jump in here?

Mr. Kennard, any final statements?

Mr. KENNARD. Yes. I just wanted to point out in response to Mr. Dingell's question. I don't know whether he will find this responsive or not. But, interstate access usage is going up in this country, and so we can offer—we can take some comfort in the fact that universal service is not going to be jeopardized while we proceed with this restructuring, which we are working very hard to do with our colleagues in the States and, really, all of the affect industries.

Mr. DINGELL. The answer is you don't know.

Mr. KENNARD. Nobody knows, Mr. Dingell.

Mr. DINGELL. When will you know? And when you know, what will you do?

Mr. KENNARD. As soon as I know, you will be the first to know, I assure you.

Mr. TAUZIN. With that behind us, the gentleman's time has expired. We have beaten this X factor horse to death.

Mr. KENNARD. I beg your pardon.

Mr. TAUZIN. I think we beat this X factor to death. I think we'd better move on. Let's take about a 40-minute break. Let's get back at about 1:40. That will give everybody time to have lunch. The committee will stand in recess.

[Brief recess.]

Mr. TAUZIN. The committee will please come back to order. While members are returning, let me do an exercise that might be useful. Let me list a couple of—you know, one of the things, Mr. Chairman, I have asked members of the industry to begin doing, both the regulated industry and the unregulated side of the communications, is to begin putting together ideas and suggestions for us as to what direction reform ought to take, some ideas.

I want to list a number of things, and before the day is over I would like you to think about this and maybe comment on each one.

I'm going to list, in fact, a list of 8, 10 approaches that have been widely, broadly suggested to us. One is that ending the FCC's role—somebody called it the Department of Redundancy—that is, doing the same things other agencies are required to do. Some of you mentioned that.

Some kind of a process that would, I know Mr. Huber talked about it, level the playing field for different players in a time of convergence. How do you get to a more level playing field for all the players in a time of convergence consistent with deregulatory approaches?

A third one we hear a lot about is ending the let's-make-a-deal philosophy. That is, that when people come to the Commission for licenses or merger approvals or something that all too often they find the process held up in sort of let's make a deal, what can you do for us that we would like you to attitude. We hear a lot of that. And I would like some of your comments about why you think that is either appropriate or inappropriate for a regulatory Commission to be doing, particularly a Commission that is migrating over to an enforcement type agency.

The question of whether or not there ought to be a presumption in favor of forbearance over regulation—Mr. Huber mentioned that—as opposed to a presumption that you have to get permission to do something as a part of the re-missioning of the agency.

Mr. Dingell has talked about ending the uncertainties in the implementation of universal service. What can we do in terms of reform that would help get us to that point sooner. I realize that may be limited, but what if anything we can do.

The using the biennial review to eliminate outdated and outmoded regulation. That is, actually requiring the FCC to use that biennial review process to do that.

You have all mentioned the modern, forward-looking agency structure. Mr. Powell, you particularly expressed concerns about whether or not it would really get anywhere. We would end up with multiple variations of the same structure under new headings.

If you can all comment to us on what kinds of new structures would be worthwhile pursuing, and which would not.

Another I think some have alluded to, defining a framework for the worldwide web. That is, making some rules that would apply to it now, some general rules that would apply to all the systems that might come into play.

Deadlines for deliberations, instead of the open-ended deliberations. Some outside time limit to get something done, particularly when an applicant is before the agency. We hear that a lot from people who are complaining to us about current procedures, that if they only knew at some point there would be a decision, that there would be some, perhaps, more certainty in the marketplace.

Sunsetting. Whether or not any forms of sunsetting of FCC rules, absent an affirmative finding, that the requirement is necessary to serve the public interest. That is a common element used in reform in many legislative areas. I know that was a very popular sort of tool used in reforming executive and legislative branches as I was coming up. You sunset unless you can affirmatively say that this is worth doing again, and for this new reason.

Those are all concepts that perhaps if you would think about and as we further explore this, either now or later, if you could comment to us on them.

Mr. Pickering is recognized from Mississippi.

Mr. PICKERING. Thank you, Mr. Chairman.

Mr. Chairman, I have a few questions. First, the core mission of the Telecommunications Act of 1996 was basically to open up all markets and remove all barriers, but the critical mission was to open local and then have the subsequent entry of the regional Bells and telephone companies into long distance. As we talked about earlier, we are seeing emerging competition, and are seeing, I think, good developments in the marketplace in technology and alliances and partnerships. I believe that we are poised to have this year as the breakthrough year.

We talked about earlier, we hoped for it to be sooner, but as we go into the third-year anniversary, my question for you is where do we stand on any 271 agreement, a breakthrough that would set a blueprint and, hopefully, would be a catalyst to expedite competition across the country in local and long and in the convergence that we hope follows from that?

Mr. KENNARD. Well, as we have talked before, Congressman, we don't have a 271 application pending before us, but we anticipate that we will have applications later this year. I am very encouraged by the progress that we are seeing in some of the States that have 271 proceedings ongoing, like in Texas and in Georgia, New York, California. And I think we went through a process, which you alluded to during the first few years after the passage of the act where a lot of companies were hedging with the litigation. They had, sort of, one eye on the courts and the other eye on the FCC.

And I think that as these legal issues get resolved, I am seeing a change in attitude among some companies that they really want to roll up their sleeves, do the hard work of opening these markets, and making the 271 process work. So, even though we don't have an application pending before us, I do believe that progress is being made and will be made this year.

Mr. PICKERING. Let me just encourage and emphasize. I think to a certain degree, our credibility, Congressional credibility in the passage of the act, and the expectations that we would see greater progress, faster progress than we have seen to date, the FCC's credibility is, I think, at stake in this year, the third year, to see progress and a breakthrough on a 271.

And so I encourage you and all the Commissioners in the FCC to work closely with the States and all competitors and participants to see a 271 agreement hammered out. And I hope it can be done in this year.

And I hope that we see the blueprint that will then be established for the rest of the country and the market forces that would hopefully replicate, or cause replication, quickly.

Do you think that can be done this year? Do you predict a 271 breakthrough this year?

Mr. KENNARD. Well, it is hard to predict, although, I'll say again, I think that we are seeing some encouraging progress. Folks are really focusing on it in some States. But I think it is important to note that the, at least in my view, the end in itself should not be to grant a 271. The end, and I'm sure you share this concern because we have talked about it, is to open the markets. That should be the goal because that is how the public is ultimately served.

Mr. PICKERING. I agree. But I do hope that everyone has the certainty of what is required and that we do see, in those states that you mentioned, possible breakthroughs this year.

Let me move on to the FCC merger review process, review and approval process, with first, Bell Atlantic-Nynex, MCI-Worldcom, now with Ameritech. What is the average time for those approvals in the merger process?

Mr. KENNARD. Well, Congressman, as you know, the FCC approves many, many mergers in the ordinary course. And, in fact, since the act was passed, we have literally approved hundreds of transactions, where companies have come together and combined and needed our approval. The time varies depending on the complexity of the transaction.

In an unopposed, routine situation, we approve—broadcast transactions often go through in 2 months, unopposed. Some of the international deals go through that quickly.

The average time is about 6 months. In the extraordinary case, where you have a hotly contested merger, where you have a huge record, like the Big Bell mergers, it takes much longer because you have important market structure issues to deal with and you have just a very voluminous record. So those can take longer than 6 months.

Mr. PICKERING. As you know, in the Telecommunications Act, we repealed 221 (A), and we tried to separate—we foresaw the merger of some of the cable, telco issues, and we wanted to give Justice Department the antitrust review. Now we maintained public trust standard review for mergers as they went forward. And this goes back to the same question of stability, predictability, and certainty for markets and investment.

And if we come to a merger process, and it is long and it is drawn out, then that can have a negative effect as we position ourselves to have the companies partner-ally, deploy networks, and

the uncertainty of what is the standard at the FCC. What is the time?

I think it does a disservice. And we need to find a way of possibly to have a certain timetable. All through the bill, we set timetables for the 271, for the regulatory process, for the rulemaking process. Would you support a 180-day, a 120-day requirement for all merger review at the FCC?

Mr. KENNARD. I think we would have to look at—the short answer is yes, but. And I think the but is an important one because I think we would have to look at lots of factors that play into the merger-review process, like the timing of the Justice Department review, the timing of other regulatory approvals, not only State approvals but also, increasingly, approvals from other jurisdictions outside the United States. And what we have tried to do is coordinate with these other entities so that that we can make the process work not only well for us at the FCC, but also work well for the companies and the parties involved.

I definitely share your concern that we could, we need to make this process work better so that it is not duplicative of other Government agencies. And I would love to work with you on that.

Mr. PICKERING. Mr. Chairman, I know my time is up, could I ask just two quick questions?

Mr. TAUZIN. Without objection.

Mr. PICKERING. And just to follow up to Commissioner Powell, do you have any thoughts, you mentioned in your testimony a possible streamlining of that process, or clearly delineating the responsibilities of the Justice Department and the FCC, do you have any thoughts on the merger-review?

Mr. POWELL. Well, Congressman, I would certainly love to work with you in more detail to flesh out proposals, but I will give you a few thoughts.

I think it starts with determining what you believe to be the unique expertise of the respective agencies that are currently playing a role in merger review. The case is often eloquently made that the Federal Communications Commission has some unique expertise that add value to the merger considerations when a telecommunication company is at issue.

And I suspect you wouldn't argue with that. Also, there are particular policy functions that cannot be considered appropriately under the antitrust laws. For example, the impact on diversity in the context of a broadcast merger, for example, would never be considered in an antitrust analysis, or universal service, or whether it is a circumvention of section 271.

But often if you look in detail, a substantial portion of the merger review, in fact, is a duplication of classic horizontal or vertical merger analysis, applying the same precedents, principles, and guidelines applied by the antitrust division. I personally have come to believe that a great deal of the marginal value of that full-blown analysis is not justified by the costs imposed. That is two sets of documents often being filed at two different agencies, two separate arguments.

I think that there is room to work to tailor the value of our role to the value that we do bring and nothing more, and try to limit those areas of duplicating competitive analysis for which we, in my

opinion, are not particularly trained or uniquely skilled to do, certainly as compared to the antitrust authorities.

I also, with respect to your question about timeframes, I would actually take a slightly different tack than the chairman, maybe to your surprise, and say, "no but." I think that what you might consider playing with two variables, time and permission to continue—it's not unlike the Hart-Scott-Rodino process in antitrust. I could imagine a proceeding that I know is partly contemplated in the Kohl-Dewine legislation in the Senate on this issue, in which after a short period of time, a quick look, it would require the vote of the full Commission to continue the investigation.

You might have additional milestones further out. I do get nervous in antitrust analysis, having previously been an antitrust lawyer, of setting some prophylactic "It's over" at 6 months no matter where you are because I think you potentially have dangerous or anti-competitive mergers that only by virtue of time you begin to gamed by the companies because they know you are running out of clock. And I think that if you trust at all, you should allow some majority of Commissioners to be able to say we think there are enough serious issues to continue the evaluation.

But I think the idea of Hart-Scott-Rodino-like milestones of which after 30 or 45 days, you would be required, the bureaus would be required, to submit to the Commission a recommendation on continuing this investigation and require us to take responsibility for its continuance.

Mr. PICKERING. Basically, I take it that we can work on both the time and the scope and look forward to working with the chairman on this issue. Just one small editorial comment in the spirit of Hershey, which is this weekend, and in the principles that are outlined in the Telecommunications Act of open and non-discriminatory access. I would hope that with all of your Commissioners, Mr. Chairman, that you would give open, equal access, non-discriminatory access, to all information, to all of your Commissioners.

And with that, that is my only editorial comments.

Mr. TAUZIN. Well said. The Chair will now recognize the gentleman from Chicago, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman. To the Commissioners, I want to, again, join with my other colleagues in expressing my sincere appreciation for your coming over here to engage us in this dialog that we have been involved with for most of the morning and into this afternoon. I really appreciate all that you are doing, and, I tell you, some might not share this opinion, but, in my humble opinion, this is one of the best Commissions that we have had. I think that you all are doing a fantastic job under some really difficult and trying circumstances.

And I want you to know this is one Member of Congress who appreciate all that you do because I can see progress. My constituents in my district, the First District in Illinois, they see progress. And I just want you to know I would just ask you to keep up the good work. You are doing a fantastic job.

Problems have not been solved. There are still problems. But from all indications from my perspective, I see some real, sincere efforts to solve the problems, to re-focus the FCC on the issues that

face the American public. And I again want to say thank you so very, very much for the work that you are doing.

I read the chairman's testimony and I think that it is a significant step in the right direction. And in my estimation, it puts a balanced framework before the Congress, before the American people, and for the stakeholders. It will allow us all to have a role in determining what the FCC will look like once this reorganization takes place.

I have one question, and that is, at relates to the telecommunications areas and concerns in my district, which is an urban district. In 1996, the Telecommunications Act was supposed to deliver certain capacities to us and certain capability to low-and moderate income urban areas, and I see a problem because the results have been somewhat disjointed. Of course, with the universal services and also with the E-Rate, there is some significant attempts to equalize and provide some equity in terms of access to the Internet.

I am somewhat frightened and somewhat concerned about the latest developments in terms of the telecommunications industry in terms of this advanced telecommunications capability. And in too many of our neighborhoods and communities throughout this Nation, we don't have the basic access to telecommunications, to the technology. And now there is a part of this Nation, the other America, is moving toward high-speed Internet access.

They are moving—they are light years ahead of some places in my district, and I'm just, Mr. Chairman I want to ask you, what methods and what approaches are we, are you engaged in to try to bring all of America up to par, bring it up to standard, one standard for all America as it relates to telecommunications technology? What are you, how are you working to correct this inequality? And what else needs to be done in terms of correcting this inequality?

Mr. KENNARD. Mr. Rush, I think you have just stated very eloquently what I believe to be one of the greatest challenges that confronts all of us as we move into the information age, making sure that all Americans are a part of it. And there is lots that we can do. We can, first and foremost, do what we are doing to promote competition because we know that competition does serve consumers best, it lowers cost, it promotes innovation, and it allows more Americans to get services faster.

But we also know that competition alone won't solve this problem. That is why we have to have a universal-service subsidy mechanism in place that works. That is the role of government. That is why I believe that is one of our core functions.

And I also believe we have to work with industry. In fact, when AT&T and TCI first proposed their merger, and they came in to see me to talk about it, one of the things I asked them is, what are you doing to make sure that these advanced services that you are promising the country reach all of the country, particularly our lower-income areas. And they actually brought in maps, including a map of Chicago, and they committed to me that they had upgraded the cable systems in the city of Chicago for the rollout of advanced services and that this will happen in all of Chicago.

That was a commitment they made to me, and I am hoping that we can work together to make sure that they fulfill that commitment.

Mr. RUSH. Mr. Chairman, I have no additional questions.

Mr. TAUZIN. Thank my friend. Also want to point out that at least in lots of parts of the Chicago area there are competitive wires offering cable service now which has your part of the world ahead of a lot of our parts of the world, Bobby. I hope—yes, you are doing pretty good in that regard.

The Chair recognizes the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Kennard, Chairman Kennard, the Commission continues to work on deciding the technical standard for CALEA, compliance. Can you or the committee provide us any kind of update? When will the standard decision will be announced?

Mr. KENNARD. Certainly. We have been working hard on that. We put a notice out, I believe it was late last year, a notice of the proposed CALEA standards, and we scheduled to have a decision this spring.

Mr. STEARNS. Okay. When we gave you the Telecommunications Act, the Commission itself—I don't mean you personally—and then we gave you the budget agreement in 1997, within all of these were stipulations about the LMA's. In fact, in subsection G of section 202 of the Telecommunications Act report language, Congress specifically instructed the FCC to grandfather LMA's currently in existence upon enactment of this legislation.

I guess the question is, why hasn't the Commission, why have you refused to act based upon direct orders from Congress, and I think this goes to several pieces of legislation, which included that language. And we are just puzzled by why you still don't seem to act, and in fact you are in direct opposite to what we requested.

Mr. KENNARD. Well this proceeding is teed up for action. Indeed, we were poised to move late last year. There was some concern about some of the proposals, and we felt we needed to do more outreach with the industry and with Chairman Tauzin and other members of this committee. That proceeding is still teed up and we anticipate this spring as well on that.

Mr. TAUZIN. If the gentleman will yield?

Mr. STEARNS. Sure.

Mr. TAUZIN. I think what the gentleman is asking, though, is both the budget act and the Telecom Act both included specific language that the LMA's should be grandfathered.

If the gentleman will let me ask the question?

Mr. STEARNS. Yes.

Mr. TAUZIN. Is the Commission going to follow the instructions of Congress? And if not, why not?

Mr. KENNARD. Well, Mr. Chairman, we may have a disagreement about precisely what that language means on grandfathering, although I——

Mr. STEARNS. Reclaiming my time. I think you mentioned to Sen. McCain regarding local marketing agreements—you told Sen. McCain last year you had a different definition of grandfathering. So maybe the key problem here is—you tell me, what is your definition of grandfathering is?

Mr. KENNARD. Well you know, the precise statutory language, the directive in the 1996 act, I think the plain reading of that statute gives the Commission discretion. Now the report language is different, and I'm not saying that we are going to exercise that discretion, but I will say that on the legal-technical point, we may have a difference of opinion on that.

Mr. STEARNS. We have a difference of opinion on what grandfathering is?

Mr. KENNARD. No. On what the——

Mr. STEARNS. Yes.

Mr. KENNARD. There seems to be a conflict between the statutory language and the 1997 budget act legislative history.

Mr. TAUZIN. Would the gentleman yield?

Mr. STEARNS. Sure.

Mr. TAUZIN. Is there any ambiguity in the report language of both the budget act and the 1996 act that says the Commission shall grandfather LMA's?

Mr. KENNARD. There is no ambiguity in the budget act legislative history, and there is no ambiguity in the statute, but they don't say the same things, precisely the same things.

In fact the Commission addressed this——

Mr. STEARNS. Why don't you take the language in the Telecom Act and act? In other words, why don't you take the language in the Telecommunications Act, I mean, basically you are just an exemption based upon what circumstances that pre-exist. So exempt them all.

We have had to come back and do this again and again.

Mr. KENNARD. That is clearly one of the things we are considering doing, and we will be acting on that soon.

Mr. STEARNS. Okay. I urge you because it has been 3½ years or so and seems as though——

Mr. TAUZIN. The Chair will be generous, will the gentleman yield again?

Mr. STEARNS. Sure. Go ahead.

Mr. TAUZIN. Let me try to make this case. If there is any ambiguity in the statute, there are pretty clear instructions as to what Congress meant in the language of the report. Why are you lawyering us to death on this thing? Are you hearing anything other than what the report says from Congress, as to what we meant when we wrote the act? Has anyone written you? Have you gotten a lot of calls from Congress saying don't grandfather LMA's?

Mr. KENNARD. There is not unanimity of opinion on this particular provision in the statute among all Members of Congress.

Mr. STEARNS. Well, if Congress passes a bill and we send it to the President and he signs it, that seems pretty unanimous in our decision. And we do it twice. I don't see how you could come here and say there doesn't seem to a unanimous opinion on this. Doesn't Congress have the right to act by majority vote, pass legislation, the President sign it, give it to—aren't you under orders to enforce it?

Mr. KENNARD. I guess, Congressman, that is not exactly what I am saying. What I am saying is that there is a discrepancy between the legislative history of the budget act and the statutory language of the 1996 act.

Look, I don't want to lawyer this to death. And I don't want to get into a detailed exposition of statutory interpretation. I will say, though, that I think we need to preserve the point that there is a discrepancy between that language. As a lawyer, it is an occupational hazard. I have to point that out.

But we understand your point of view on this particular provision, and we will be moving ahead on it this spring.

Mr. TAUZIN. Would the gentleman yield again?

Mr. STEARNS. It is a broader problem, Mr. Chairman. And let me try to state it. The broader problem is—I think Mr. Huber spoke about it, some of you spoke about it in terms of re-authorizing and reforming the FCC, the FCC too often finds reasons not to follow the will of Congress. And granted you may find that there is some wiggle room in there, but the will of Congress, and particularly those who wrote the statute, pretty well expressed in the report language. There is a unanimity of expression from the folks who wrote that language as to what they meant.

They meant for these LMA's to be grandfathered. Pretty clear. I mean, yes, you can find some wiggle room if you want to, but the broader question is why does the FCC do that? Do we need to change some laws so the FCC doesn't have this authority to go out and make policy that is directly contrary to what is clearly the intent of the folks who write the law and send it to you to enforce it?

I mean Harold made a great statement about not wanting to tell us how to write the law, that his job is just to enforce it. That is pretty nice. Why isn't that the rule at the Commission, particularly in a case where it is so very clear what the authors of the legislation mean when they spell it out twice in two statutes in the report language? I mean, why are we having this legal argument over this?

Mr. KENNARD. Well, I take your point, Mr. Chairman. I guess the—whenever the Commission addresses issues of statutory interpretation, it is not that we are just doing this to frustrate your will, it is because if we don't raise these issues and think them through carefully, people will raise them in court. And that is where we get into trouble in the Judicial Branch. So——

Mr. TAUZIN. Will the gentleman yield again? I will be generous if the gentleman wants to proceed.

But if you say you have discretion, and that is your legal conclusion, and if there is language in the report language from Congress saying do this. Who are on earth is going to win a battle in court against you that you used your discretion and did what Congress asked you to do here? Who on earth is going to win that legal battle?

Why would any lawyer advising you say, watch out, you are going to get sued on this one?

I mean, that is hard to follow, Bill.

Mr. KENNARD. I take your point on that.

Mr. TAUZIN. The gentleman may proceed.

Mr. STEARNS. Let me just finish up here, Mr. Chairman.

Chairman Kennard, the D.C. Circuit Court recently invalidated the FCC's affirmative action rules as a violation of the Constitution's equal protection clause. Yet, I recently read that the FCC is

considering adopting new affirmative action rules, notwithstanding the court's Constitutional ruling. And I understood that one of your legal bases for doing this is you are relying upon language in a conference report accompanying the 1992 cable act.

And I guess the question is, is that true?

Mr. KENNARD. Well, certainly in the 1992 cable act Congress did pass legislation codifying EEO rules in the statute. I don't know what you are quoting from and what we are relying on, but I will tell you what we are doing with the EEO rules.

Mr. STEARNS. Sure.

Mr. KENNARD. The U.S. Court of Appeals did invalidate the Commissions rules as applied to broadcasting. The Commission revisited those rules in the wake of that court decision and put out a proposal to modify the rules to address the concerns of the court.

It was a view of the majority of the Commission that the rules are important and that the Commission should try to restructure the rules to address the concerns of the court. And that is what we are doing.

Mr. STEARNS. I was just trying to show how you are using accompanying language in a Congressional report to invalidate a D.C. Circuit Court. I think what I am suggesting, and the chairman and I are on the same track here, we are trying to show you how you go to Congress when you want to go ahead to invalidate a District Court ruling, you will use language from the report, and then when we instruct you twice dealing with LMA's, you are sort of saying, "Oh, we can't go forward because there seems to be confusion between the budget act and the Telecommunications Act.

It is not necessarily asking for an answer, but I am just saying that the feeling we have here is that you folks are grasping for anything you can to push a different agenda than from which Congress is trying to instruct you.

And so we submit that the case that Chairman Tauzin and I have brought forward dealing with the grandfathering of LMA's is clear example where you are not doing what Congress is asking you to do, understanding grandfathering. The definition is very simple.

And now you say you are going to do something in spring, but we have brought this before and there just seems to be waiting and waiting on this issue.

So, Mr. Chairman, is there anything you want to add certainly. I think——

Mr. TAUZIN. I think you covered it. Thank you.

Mr. STEARNS. Okay. And I thank the chairman.

Mr. TAUZIN. Thank the gentleman. The Chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. This has been very—a good hearing and very educational. Mr. Chairman, I will yield to the opposite side.

Mr. TAUZIN. I don't think the gentleman has gone yet at all on the first round? That's right.

Mr. SHIMKUS. Correct.

Mr. TAUZIN. On the first round. That's right. So we joined through the first round. I'm sorry.

No, I understand. I was answering the gentlelady's request. We are still on the first round. If the gentlelady will allow me, Mr. Shimkus is recognized on his own time.

Mr. SHIMKUS. This has been a good hearing. I know it is kind of like the Bataan death march for many of us, but we are learning and we are getting some good issues out on the table. I am glad that my colleague from Florida went first because I am pretty sympathetic. I want to keep my focus on the future restructuring of the FCC, but I just want to associate myself with the comments of the chairman and my colleague from Florida. I used to teach government and politics in high school, and this is a very simple case study of why we have to return time and time again and continue to rewrite laws based upon the Executive branch reinterpreting Congressional intent.

I don't think there is a clearer example than what the gentleman from Florida brought up. Pretty clear, straightforward, a non-lawyer can understand it, 95 percent of the American public can understand it. We ought to just fix it, and we ought to comply. But I appreciate my colleague bring this up. It has fired me up, and I didn't want to be fired this late in the day.

I do want to focus on a kind of macro issue and a micro issue. Macro is going back to the future of the FCC, going back to your three categories, consumer protection, universal services, spectrum management. Mr. Huber in his comments talked about an area of high-speed digital system. And really, I think, from the layman's terms of taking all the analog systems of broadcast, telephone, and looking at the high-speed digital system, which I would think would be another sub-category, if you were to accept his model—I guess the question is, does that position make sense in a future of the FCC?

Mr. KENNARD. I think it does in this respect. I agree with Mr. Huber that the world is changing, the world is changing very fast. The FCC has got to change with it. We talked earlier about some of the statutory constraints. And I look forward to working with this committee on addressing some of those. And there are also regulatory constraints.

I guess I would reiterate something that Commissioner Powell said a little earlier. And that is that, to paraphrase, we shouldn't reform just to reform. We ought to have a clear sense of what our mission is. I get a little bit concerned when I hear people talk about creating these sort of super bureaus at the FCC because I don't know if that is going to solve the problem, because a lot of these issues sort of go beyond structure.

So I am not sure if that directly answers your question, if not——

Mr. SHIMKUS. Well, what I also have—I talked to Congressman Oxley earlier in this day because I now serve on his subcommittee on the financial services, and I think the debate—I shared it with him to make sure that I was, that my thought process made a little bit of sense. And the process is, if you look at—the debate we are having is, where is the future role of your agency? And is it a regulatory agency? Or will it be an enforcement? And how do we move there?

And I think we have a great example of the SEC, who is really more enforcement oriented. And that is where I see the future being, especially as you address the issues of competition, as being really another category that you thought was critically important. So I would—is that a proper analysis of the future: more of enforcement than regulatory?

Mr. KENNARD. Absolutely. Absolutely. One of the things that I did last year is, in consultation with my colleagues, announced our plans to create an enforcement bureau. And this is more than symbolic. We really do want to change the enforcement ethic at the FCC. It is my view that as these markets become more competitive, we have to have an enforcement mechanism that makes more sense and that allows us to get out of the business of being the gatekeeper, deciding who gets in which market and who can compete where, but rather to write the rules of competition to make sure that the real fundamental, pro-competitive rules are in place and then enforce them aggressively and swiftly.

So I do agree with you. The philosophy should shift toward enforcement.

Mr. SHIMKUS. Mr. Chairman, if I may?

Mr. TAUZIN. The gentleman may proceed.

Mr. SHIMKUS. On the competition side, and not just with the merger analysis, but also on all your proceedings, I think it would be helpful in the competitive aspect of something that you support is that there be—I mean we are in March Madness time—that there be a shot clock of some sort so that everybody on board knows, especially in proceedings, how long they can expect to wait or not to wait so that the investors can get lined up, the process can move forward.

I am a former Army officer. You know, when you make no decision, that is a decision. If you delay a decision, that is a decision. And it throws the future in peril by delay. I think—I believe that our committee would clearly be, a large percent of us would want to encourage you to move proceedings along at a much greater pace. And that is a comment on my part.

The last point I will make is, micro, the E-Rate. You have heard my complaints about it before. You put us in a terrible bind. Those of who are tax cutters and want to address the E-Rate, we are in a bind between being a tax-cutter and against schools, or for schools and for tax increases.

I want to publically state my support for my chairman's position, which he will formally take, I hear, in a week to address this problem that we have with the E-Rate and do it in a proper way when he releases his bill. I would like to have your comments on that position.

Mr. KENNARD. Glad to.

Mr. SHIMKUS. I yield back.

Mr. TAUZIN. Thank the gentleman very much. The Chair recognizes the gentleman from Texas, Mr. Green, now.

Mr. GREEN. Thank you, Mr. Chairman. I am glad my colleague from Illinois brought that up because the E-Rate, the way it was originally handled, and thank you for correcting it, but before I came to the Commerce Committee, I served on the Education Committee, and obviously the E-Rate and the uses of those funds are

important to my schools in Houston, Texas, getting an urban district.

But Mr. Shimkus, one of our colleagues, Congressman Klink from Pennsylvania, has a bill that would eliminate the E-Rate and cut the Federal excise tax. So our rate-payers would actually save money then. And that is a bill—I know I am a co-sponsor of—and so it is something we might want to consider in this committee.

But let me go to some of the other questions because I think you have heard about the E-Rate, and I am glad it has been corrected because it is awfully important to urban areas, and even rural areas, particularly in urban areas that do not have the resources to wire schools, even though we work with our local phone companies.

A few weeks ago, the Commission ruled on ISP traffic in reciprocal compensation agreements. And in the ruling, you said that ISP traffic on the whole is interstate in nature, and that set off lots of letter-writing campaigns, but not that many, mainly an e-mail campaign.

Mr. KENNARD. That's right.

Mr. GREEN. And saying that we are going to make ISP calls long distance. And in my opening remarks, I mentioned it. And if you could give me your assurance, one, that the FCC will not take those steps to make ISP calls a long distance call, and does your ruling open the door to assessing an ISP call as a long-distance call because if it is, and if the provider has to pay it, then you and I know that the ultimate Internet user will have to do it.

And I know if we have been bombarded on this committee, I can imagine you have too. And so if you could address that.

Mr. KENNARD. In the wake of that decision, Congressman, I started getting about 500 or 600 e-mails a day. So I am very familiar with this particular issue. And the message that we conveyed back to those folks who sent us e-mails is that, rest assured, we are not interested in changing the way that people use the Internet. One of the reasons why the Internet is growing so fast is because people can use the Internet for a flat rate, it is treated as a local call. Nothing that we did in our decision recently is going to change that.

And I know that there is a unanimous commitment from this Commission not to impose any sort of permanent charges on the use of the Internet.

Mr. GREEN. For long-distance calls?

Mr. KENNARD. Yes.

Mr. GREEN. That is the fear.

Mr. KENNARD. Yes. That is what I mean, long-distance charging.

Mr. GREEN. And I also, you know, I know the 1996 act that I wasn't on the committee for, also, I understand the language in there, made sure that that is not happening.

But as my colleague, my ranking member Dingell, sometimes the statutes may not be interpreted the same way at the Commission as they are here. Let me go to my next question. I appreciate that, and believe me, we will follow up with our constituents, who have been concerned about it.

The FCC released the property record audit of the Bell operating companies which said that these companies could not locate over

$5 billion worth of equipment. And I know Chairman Tauzin and my ranking member Dingell sent you a letter requesting answers to a series of questions about the audit process, and I don't know if you have responded to the letter, and if you have, if we could get a copy of the response. Again the concern I have, at least it is being played out in the newspapers and the media, that the property record audit, the Bell operating companies did not have the opportunity to actually show that they have these assets, and if you could just address that.

Mr. KENNARD. Sure. First of all, we did respond to the letter that was sent to us by Chairman Tauzin and Mr. Dingell. And I would be happy to get you that response.

Second, the Bell operating companies did have lots of opportunities to work with the FCC in the many months leading up to the FCC's decision to release the audit. In fact, for approximately a year, the FCC staff worked closely with auditors from the Bell company so that they could understand what we are doing and we could respond to their concerns. But they will have even more chances because the release, when the FCC voted to release this report, we did so without drawing any conclusions about what the report means. In other words, we didn't take enforcement action, we didn't indicate what the implications of this would be for ratepayers.

And so we hope to have yet another opportunity, not only for the Bell companies, but for other people in the marketplace, and particularly the State regulators who are very interested in this data. In fact, the National Association of Regulatory Utility Commissioners passed a resolution asking the FCC to release this report so that they could have the benefit of the information in it.

And so there will be opportunities for lots of people to comment on it further.

Mr. GREEN. And so the FCC—did you consult with the independent public accounting firms that do the annual audits for the Bell operating companies?

Mr. KENNARD. Did we what? Did we meet with them?

Mr. GREEN. Was there the opportunity to consult with the independent accounting firms that perform the financial audits for the Bell companies?

Mr. KENNARD. I believe so, although I wasn't involved in those meetings. So I am not exactly sure. But I know that I directed the staff to meet with the Bell companies and their auditors to get their perspective on this audit report. Whether they were independent auditors or in-house auditors, frankly, I don't know, but I could certainly find out.

Mr. GREEN. Okay.

And, also, you mentioned that the local—like in Texas we have the Public Utility Commission—the continuing property records I am sure will have an effect on the consumer rates and also the access charges that may be set in local jurisdictions, and I guess even—so that has an impact.

Mr. KENNARD. Well, that is an issue that will have to be vetted in the public record. Again, we haven't drawn any conclusions as to how this affects access charges or rates, or compliance with our rules. We just wanted the information out there so that the Bell

companies could have yet another opportunity to review the information and that members of the public, consumer groups, State regulators, competitors, will have access to that report.

Mr. GREEN. Okay. Thank you, Mr. Chairman. I know we have a vote on.

Mr. TAUZIN. Thank you very much, sir. The Chair recognizes himself. We are going to go a little while longer, take a break for these votes, and come back. The problem is, we have a 5-, a 15-minute, and a 5-. So we may need to come back at 3:30.

Let me quickly ask you a couple questions, Mr. Chairman. And I wanted to follow up on something Mr. Pickering was doing regarding these mergers, time limits on them.

Ms. ESHOO. Mr. Chairman, I hate to do this, but I have been here since 10:07 this morning. Can I just submit my questions to the chairman to be responded to in writing so that I don't have to stay any more? I mean, it has been instructive, but this has really been a long haul. With your permission, I would like to do that.

Mr. TAUZIN. Let me ask the gentlelady, has she had a round yet with the Commission?

Ms. ESHOO. No. I haven't.

Mr. TAUZIN. Well, my apologies. The gentlelady is recognized right now. Proceed.

Ms. ESHOO. At this point, I would just like to submit them in writing and ask for permission to do that, and ask that the chairman respond. Thank you.

Mr. KENNARD. Gladly.

Mr. TAUZIN. I thank the gentlelady.

What do you want to do? We are going to go another 5 minutes. We will come back at 3:30

In regard to what Mr. Pickering was moving on, the question of mergers and holding mergers up. We repealed and got rid of comparative license renewal and went to auctions for licenses, trying to get away from a process where there was a lot of green-mailing going on. A lot of people were filing objections to licenses, green-mailing individuals, shaking them down, as close to blackmail as I have ever seen.

And one of the reasons we moved to get rid of that process, to go to some objective process of re-licensing was to eliminate that opportunity. I want to ask you, is the process by which the Commission holds up merger applications, holds up acquisition applications for licenses, is it leading to the same problem? People are filing objections to these mergers. People are delaying the Commission's work in these areas. Do you sense, do you find, do you feel that there is a chance that people are doing this in order to green-mail or legally blackmail applicants before the Commission?

Is this another opportunity for the same problems to express themselves as they did in the old licensing broadcasters situation?

Mr. KENNARD. I really don't think so. The Commission addressed this issue in the broadcast context a number of years ago, when the Commission reformed its rules to make sure that people couldn't do exactly you described. They would file a petition and then hold up a licensee for money or for some other considerations. So we scrutinize those petitions pretty carefully, and, in fact, under our rules

they have to come in and disclose what consideration was received in exchange for any dismissal of a petition or anything like that.

I think that, you know, a lot of the—in the current mergers on the telcom side, what we are seeing now are competitors coming and raising a lot of, you know, fairly complex issues about market structure.

Mr. TAUZIN. I am aware of those. I am more concerned about these acquisition applications where—there are two concerns. Mr. Pickering has raised the one about where it is open-ended, where there are no time limits for adjudication, raised the concern to make sure that there was adequate sharing of information among Commissioners regarding those situations.

I am raising the concern that it may open the door, these open-ended processes, may open the door to people finding it convenient to hold somebody up for an illegitimate purpose. And I am suggesting that reform in that area may cure that possibility, as it did in the comparative license renewal situations.

Second, I am deeply concerned with the notion that people who are entitled to relief in an application before the Commission may be held up because the Commission may decide that we want to hold you up pending a decision as to whether we are going to change our rules and regulations, say on an ownership issue.

Is it fair to an applicant who is trying to purchase a license or acquire a license and merge to have their rights withheld them because the Commission may want to change the rules in the future when they are entitled to their remedy today under the current rules of the Commission?

Any one of you. Would you like to respond?

I see Mr. Powell shaking his head. Would you like to respond, Michael?

Mr. POWELL. I will say this, having worked at the antitrust division of the U.S. Department of Justice, there is the opportunity for what you describe. And I would probably agree with the chairman that we are seeing rampant uses of this at the moment, but I wouldn't be honest if I didn't say I have seen attempted uses of it, modest, but quite frequently.

Part of the problem is that merger review in an administrative agency's structure, is open to the Administrative Procedures Act and the kinds of processes and requirements that we have to go through that the antitrust division does not. The antitrust division insulates itself from this by insisting it is a law enforcement agency.

And I assure you, the DOJ halls are not being walked by every opponent of every possible merger review getting audiences with Joel Klein. At the FCC, every time someone files an ex-parte, every time someone attempts to come in and meet on a merger, we generally, our staffs, are required to respond to any considerations raised in these contexts or they would be accused on review of having not adequately addressed the record, et cetera.

There is an enormous amount of opportunity within that structure to abuse and use it for reasons that are, arguably, not really merger-specific or are, in fact, an attempt to delay or impose predatory conditions on a future competitor. And I think that that hap-

pens a bit. I think there is potential for it to happen a lot. Right now——

Mr. TAUZIN. I understand. I would hope you would be watching that all the time. And I am assured you would. I am concerned that the opportunity is there.

Second, do any of you believe you have the right as a Commission to deny someone an application because you may change your rules later on? Any of you believe you have that right? Are applications being held up because you may change your ownership rules in the future, to be specific?

Mr. KENNARD. What? I am confident that the Commission wouldn't deny an application because of——

Mr. TAUZIN. But you might not take action on it, just waiting to see if you are going to change the rules.

Mr. KENNARD. No. Actually, what happens is usually the reverse.

Mr. TAUZIN. How do you mean?

Mr. KENNARD. Companies come in and they file an application asking for a transaction to be conditioned on the outcome of some future rulemaking. And frankly, that has created problems at the FCC, particularly in the broadcast area.

Mr. TAUZIN. Yes.

Mr. KENNARD. And that is an area we are trying to get away from.

Mr. TAUZIN. I just want to raise an issue, because I think as we address the issue of how mergers and applications are handled by the Commission, those are concerns I would like you to be thinking about and interacting with us on.

Finally, I think Mr. Dingell did want to do another round, but I think I am going to let you go, with his indulgence. I think we are just going to wrap it up here.

Let me just ask one more thing, Mr. Kennard. My understanding is the President's budget includes a provision that, if enacted, would permit the Commission to strip bankruptcy licensees of their licenses even if they were under the protection of the bankruptcy court.

You and I know what this is all about.

Mr. KENNARD. Yes. Of course.

Mr. TAUZIN. This is snuck in appropriations. This is being done outside the authorizing committee. And, No. 1, I would hope that the Commission is not part and parcel of an attempt to avoid the authorizing committee in this area. And, No. 2, I would ask you why should the Commission receive more favorable treatment than any other creditor, including equipment manufacturers, such as Lucent, in these cases? Why should the Government, the Commission, get more favorable treatment in a bankruptcy?

And more importantly, why would anyone seek to handle this issue in an appropriations level instead of through the committee that I hope you respect as much as we try to respect your authority.

Mr. KENNARD. Well, of course, as you know, Chairman Tauzin, we have talked about this issue many times. And I have always sought your input on this particular issue, and will continue to do so. But my view is that it is important that the FCC have the ability to take licenses, to circumvent the bankruptcy process when we

have optioned licenses and become, in effect, the creditor for the licensee because for the auction process, in my view, to work best, we have to have confidence that if somebody bids in our process, gets an installment payment plan, and then gets into trouble and can't pay, that we will be able to re-option that spectrum because, after all, it belongs to the public. And we have to ensure that it is put to good use for the public——

Mr. TAUZIN. You and I know we disagree on that?

Mr. KENNARD. Yes.

Mr. TAUZIN. But why would—I hope you are not part of it. Why would you be part of it? I hope you tell me you are not. Of an attempt to do this in a rider on an appropriations bill instead of settling this before the authorizing committee?

Mr. KENNARD. well, I don't know what the genesis of this particular rider is——

Mr. TAUZIN. Just snuck in there?

Mr. KENNARD. Yes. I don't know how it got in there.

Mr. TAUZIN. Did the Commission ask for it?

Mr. KENNARD. I don't know. I will find that out for you though.

Mr. TAUZIN. I would appreciate a direct response on that.

Mr. KENNARD. Certainly.

Mr. TAUZIN. I have to go make the vote. And I think Mr. Dingell will understand. I think he does. The hour is late and we very much appreciate all of you being here, we will continue this process, of course.

I deeply appreciate, again, your patience, your time. And again want to reiterate how important I think this issue is and how much I appreciate the fact that you are taking it seriously because we certainly are. Thank you very much, sir.

Mr. KENNARD. Thank you, Mr. Chairman.

Mr. TAUZIN. The committee stands adjourned.

[Whereupon, at 2:52 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSES OF THE FEDERAL COMMUNICATIONS COMMISSION TO FOLLOW UP QUESTIONS FOR THE RECORD

QUESTION FOR THE RECORD FROM REPRESENTATIVE STEARNS

Question: Chairman Kennard, the 1996 Telecom Act directs the FCC to liberalize its "one to a market" radio/television cross ownership rule in the top 50 markets. Since 1993, the FCC has granted 36 permanent one to a market waivers, and of those, nine have been waivers encompassing one television station, two FM and two AM stations. So for 6 years, it has been the FCC's policy to grant permanent waivers authorizing one tv and four radio station combinations.

It has been widely reported that the FCC's staff proposal on one to a market last November was to allow the one tv/two FM two AM combination. But that strikes me as somewhat disingenuous. The '96 Act clearly directs the FCC to liberalize the rule. But if all you do is adopt current practice dating to 1993, doesn't that fall far short of what Congress intended in the '96 Act?

Answer: The Commission has adopted a "presumptive" waiver policy under which it will look favorably on granting a waiver to allow the common ownership of one TV station, one FM station, and one AM station in the top 25 television markets if at least 30 independently owned broadcast voices remain after the merger. *See* 47 C.F.R. § 73.3555, Note 7(1). Section 202(d) of the Telecommunications Act of 1996 directed the Commission to extend this waiver policy to any of the top 50 television markets "consistent with the public interest, convenience, and necessity." In a *Second Further Notice of Proposed Rule Making,* 11 FCC Rcd 21655, 21685 (1996), the Commission stated that, "[c]onsistent with Section 202(d) of the 1996 Act, we pro-

pose, at a minimum, to extend the Top 25 market/30 voice waiver policy to the Top 50 markets."

It is also true that the Commission has permitted permanent television-radio combinations consisting of up to one television station and two FM and two AM stations in the same market, where the applicant had made specific factual showings satisfying a stated five-factor waiver standard. In the *Second Further Notice,* the Commission invited comment on a variety of possible changes relaxing the one-to-a-market rule beyond that specifically contemplated by section 202(d) of the Act.

We have received a wide range of comments regarding these proposals. Some parties have urged the Commission to relax the one-to-a-market rule, but a number of others oppose modifying the rule given their concerns about the impact this would have on competition and diversity. I am studying all the options raised by these proposals. In deciding these issues, I will of course be guided by section 202(d) of the 1996 Act as well as section 202(h) of the Act which requires the Commission to review its ownership rules biennially and "determine whether any of such rules are necessary in the public interest as the result of competition." In doing so, I will "take into account the increased competition and the need for diversity in today's radio marketplace," as is stated in the Conference Report on the 1996 Act.

QUESTIONS FOR THE RECORD FROM REPRESENTATIVE LARGENT

Question: The Telecommunications Act of 1996 required the FCC to reform universal service in order to make universal service competitively neutral while ensuring the delivery of service in high cost areas. If universal service subsidies are limited to incumbent carriers, won't competitors find it difficult to provide service in high cost areas? What is the status of universal service reform and when can we expect universal service to be complete?

Answer: I agree that limiting universal service support to incumbent carriers would limit competitors' ability to enter the market. Historically, universal service support for serving rural and high cost areas was only available to incumbent carriers. In the *First Report & Order* implementing section 254 of the Act, however, the Commission made universal service support "portable" to any carrier that wins the customer. This change took effect January 1, 1998.

I, and my colleagues on the Commission, are working diligently to reform the universal service mechanism for large carriers serving rural and high cost areas in an effort to make the program more consistent with the development of competition. As required by section 254, we convened the Federal-State Joint Board on Universal Service and received their initial recommendations in November 1996. In May 1997, the Commission adopted a comprehensive plan for high cost universal service reform. The Commission determined that support should be portable, as noted above, and that it should be based on the forward-looking cost of providing the supported services, which is the basis of economic decision making in a competitive market. The reform process was bifurcated, and small, rural carriers were guaranteed that there would be no potential decreases in the support available to them until at least 2001. For large carriers, the Commission set about refining and selecting a cost model for estimating forward-looking costs.

In November 1998, the Commission received further recommendations from the Federal-State Joint Board on Universal Service as to how support amounts should be determined in light of forward-looking costs, particularly with respect to support for maintaining reasonably comparable intrastate rates. The Commission is currently considering an *Order* and *Further Notice of Proposed Rule Making* acting on the Joint Board's recommendations in May 1999. Commission staff are working to refine the cost model and we are striving for implementation of a universal service support mechanism for large carriers serving high cost areas in January 2000.

In reforming universal service support for rural and high cost areas, I believe the Commission must ensure that support—for the carrier that wins the local customer—will not be eroded as the Act's competitive environment emerges, while acknowledging that high cost universal service support is an existing program on which many carriers depend. I am striving to strike a balance between ambition and caution as we move forward. Of necessity, therefore, the process is and has been an incremental one.

Question: One of the major goals of the '96 Act was to bring competition in the local telecommunications marketplace. We have heard a lot about competitors seeking entry into the business marketplace, but we hear less about competitors seeking to enter the residential market. What is the status of competition for residential service? Is competition for residential service emerging anywhere? What ingredients appear to be necessary for successful residential local competition?

Answer: Thanks to the 1996 Act, competition has begun in the local telecommunications marketplace. Today there are ten times the number of competing local carriers (nearly 150) as there were prior to the 1996 Act. There are also over 20 publicly-traded competitive local exchange carriers (CLECs) with a combined market value of $33 billion versus just 6 with a combined value of $1.3 billion prior to the 1996 Act. The Commission has worked hard to eliminate barriers to entry into the local markets. One means the Commission uses to determine whether incumbent LECs are taking the necessary steps to open their local markets to competition is the section 271 review process. Another means is through dialogues that the Commission has had with Bell Operating Companies (BOCs), competing carriers, and other interested parties. Information gathered using both these means shows that no BOC provides nondiscriminatory access to its respective operations support systems (OSS) functions consistent with the 1996 Act's nondiscrimination requirement. Review of the BOCs' deployment of OSS functions under the section 271 process, at both the state and federal levels, will assist in opening the local exchange market to competitive entry as envisioned by the 1996 Act.

Nondiscriminatory access to interconnection and collocation is also crucial to the development of local exchange competition. Through the review of section 271 applications, and other information, the Commission has been unable to conclude that any regional BOC provides nondiscriminatory access to interconnection and collocation. As part of its Advanced Services proceeding, the Commission has recently released new rules on collocation. With these efforts, the Commission hopes to eliminate certain interconnection and collocation practices that pose barriers to entry. Further, in accordance with the 1996 Act, the Commission promulgated rules requiring incumbent LECs to combine unbundled network elements (UNEs) for requesting carriers so that requesting carriers could provide local exchange service entirely through the use of UNEs. Access to combinations of UNEs allows new entrants to provide local exchange service to end users on the same cost basis as the incumbent LEC. The Commission's rules in this area were vacated by the Eighth Circuit Court of Appeals. The U.S. Supreme Court reversed much of the Eighth Circuit's decision, but also remanded, in part, the Commission's implementation of the network unbundling obligations as set forth in the 1996 Act. The Commission recently released a *Further Notice of Proposed Rule Making* in this proceeding and hopes to act on this issue as soon as possible. In the meantime, the Commission will continue to review BOC section 271 applications to ensure that new entrants are able to combine network elements in a non-discriminatory manner.

Competition in the residential market is developing, but not as quickly as we had hoped. A number of cable television companies are providing competing wireline local exchange service to residential customers in their serving areas and this type of residential competition is expected to grow rapidly in the next few years. For example, in the context of the AT&T/TCI merger, AT&T described its plans to upgrade TCI's cable systems in order to provide competing telephony services and assured the Commission that it intends to use these upgraded systems to provide residential local exchange service in the foreseeable future. Certain industry members claim that there may be insufficient profit margins associated with serving residential customers within certain markets that make it difficult for competitors to compete with the incumbent LECs in serving these customers. Costs incurred by competitors to utilize elements of incumbent LECs' networks such as loops and for collocation can make it economically difficult to provide competitive service in some markets. A serious barrier to "mass market" competition is deficient interconnection between the incumbent LECs and the competitive LEC's operations support systems. Without seamless electronic interconnection between these systems, manual intervention is required. Such manual efforts are capable of handling only a very small volume of high revenue (*i.e.,* business) customers. We are seeing progress in these areas, as incumbents improve their operations and as this Commission and our state colleagues step up enforcement activities. In addition, by bundling local telephone service with other services, such as long distance, Internet access, and video, some competitors are able to create a viable package of offerings. I also note that utility companies, either on their own, or through joint ventures, have begun offering local telephone service to residential customers. A number of competitive LECs are offering residential services to apartment complexes where the density of customers makes it economically feasible to build competitive facilities. The development of local competition, particularly in the residential markets, takes time. The Commission, nonetheless, is optimistic that residential consumers will soon reap its rewards.

Question: Recently, I have heard a great deal from my constituents on the issue of number portability charges on their phone bills. Would any of you care to comment?

Answer: (Chairman Kennard) In the 1996 Act, Congress mandated that all local telephone companies provide local number portability in accordance with requirements to be established by the Commission. The number portability charge that appears on your constituents' telephone bills is the result of the Commission's implementation of the number portability provisions of sections 251(b) and 251(e) of the Telecommunications Act of 1996.

Long-term telephone number portability provides residential and business telephone customers with the ability to retain, at the same location, their existing local telephone numbers when switching from one local telephone service provider to another. Congress recognized that consumers are less likely to switch local phone companies if required to change phone numbers in the process, and that implementation of number portability would lower barriers to entry and promote competition in the local exchange marketplace. Although telecommunications carriers must incur costs to implement number portability, and some part of those costs may be passed on to consumers, the long-term benefits will give consumers more competitive options, lower local telephone prices and, consequently, stimulate demand for telecommunications services and increase economic growth. For example, after the Commission required number portability in 800 numbers, enabling customers to keep their 800 number when changing long distance carriers, demand for toll free service increased dramatically. Although the savings that have accrued to consumers are not easily quantified, since price is a significant component of demand for this service, it is reasonable to conclude that consumers are benefitting from lower prices and greater choice.

In the 1996 Act, Congress also mandated that the costs of establishing number portability should be borne by all carriers on a competitively neutral basis. In May 1998, the Commission released the *Third Report and Order,* reaffirming its previously adopted competitively neutral standard and establishing the cost recovery standards for long-term number portability. To enable local exchange carriers to recover number portability costs on a competitively neutral basis, the Commission permits, but does not require, incumbent local exchange carriers to recover some of their costs of implementing number portability through a federal charge assessed on end-users and through a query service charge assessed on other telecommunications carriers. Recognizing consumers' sensitivity to end-user charges and that many of the network upgrades made by carriers to implement number portability also will provide other services or features, the Commission narrowly defined the costs it would permit carriers to recover through federal charges. The Commission determined that only costs directly related to number portability are to be recovered through number portability end-user and query services charges. These are costs that: (1) would not have been incurred "but for" number portability; and (2) must be incurred "for the provision of" number portability.

Under the Commission's rules, local exchange carriers cannot begin to charge their end-users for the costs of local number portability until local number portability is available in their area, can begin to charge consumers in areas where number portability is available no earlier than February 1, 1999, and must end consumer charges after 5 years. Moreover, not all costs are passed directly through to consumers. For example, query service charges other carriers pay for using the local exchange carrier's querying capabilities help lower the charges local exchange carriers assess their end-users.

By carefully scrutinizing the local number portability tariffs filed by local exchange carriers, the Commission is acting to ensure that end-user and query services rates for long-term number portability are reasonable and as low as possible. Following an investigation of these tariffs, which must be concluded within 5 months of the effective date of the tariff, rates found to be unreasonable may be rejected. The Commission then may prescribe a just and reasonable rate and order refunds of overcharges, if any.

As noted above, the Commission understands consumers' sensitivity to additional charges on their telephone bills. In the long term, consistent with Congress' intent, the Commission expects the implementation of local number portability to benefit consumers by lowering prices, making a wider variety of telecommunications services available, encouraging more advanced telecommunications services, and improving the quality of telecommunications services as new local telephone companies compete for business.

Answer: (Commissioner Ness) I agree with the Chairman that long-term number portability is crucial for competition, because it enables consumers to change service providers without being forced to change their phone number. Number portability is a statutory requirement, and it imposes costs on all carriers which they are entitled to recover. Nonetheless, as I noted at the time of the Commission's decision, I was troubled by the prospect that a single class of carriers—the incumbent

LECs—would recover their costs from consumers who do not yet have a choice of local exchange carrier. I would have preferred that residential consumers be shielded from such number portability charges until they actually experience the benefits of competition. But, in the give and take that led to the consensus order, I ultimately agreed to a regime under which incumbent LECs are allowed to recover number portability costs only in areas where number portability capability has actually been deployed. In such areas, consumers at least have a greater potential—but not the certainty—of having a choice of local carrier.

Answer: (Commissioner Furchtgott-Roth did not respond to this question.)

Answer: (Commissioner Powell) I generally subscribe to the views expressed by Chairman Kennard in his response to this question. One of the most difficult challenges of implementing the Telecommunications Act of 1996 concerns the need to require changes in the telephone network, which was designed primarily for use by monopoly providers, in order to allow multiple, competing carriers to provide service using parts of that network. Implementation of the Act's local number portability requirements involves one of these changes to the network. The network modifications necessary to provide number portability are analogous to steps taken more than a decade ago to provide long distance companies with "equal access" to the local telephone network following the divestiture of AT&T. Equal access has led to an increasingly competitive long distance market. Similarly, I believe that changes in the network relating to local number portability will make it easier for firms to compete with incumbent local telephone companies and hopefully thereby bring the benefits of competition to consumers. Although I am sensitive to the public's concern about the appearance of local number portability charges on customer bills, I also believe that carriers should have some reasonable and fair opportunity to recover their costs of complying with the statutory requirements. That said, I firmly support taking effective steps to scrutinize the manner in which carriers are allowed to recover these costs.

Answer: (Commissioner Tristani) Since the 1996 Act became law, carriers have added a number of new charges to the bill, and the occasionally inadequate or misleading descriptions of the charges only add to consumer frustrations. So I well understand consumers' unhappiness with the new charge for number portability that has recently appeared on some local telephone bills.

The 1996 Act mandated that carriers deploy number portability. Since the carriers were forced to spend significant sums of money to comply with this legal requirement, I believe carriers should be allowed to recover that cost in some reasonable manner. They are doing so through the number portability charges on local telephone bills. I note that the Commission is currently investigating the number portability charges of several carriers that were submitted in tariff filings to insure that they are reasonable. It is also worth noting that carriers are free not to impose number portability charges on their customers. The FCC did not mandate that carriers impose number portability charges; it only permitted this method of cost recovery. In the end, I am optimistic that number portability will accelerate competition in the residential telephone market and will lower prices and improve service. Those benefits, I believe, will outweigh the charges now being paid by some telephone customers.

Question: I understand that the FCC is about to let the U.S. registration of the 60° orbital slot lapse. Aren't satellite orbital locations an increasingly scarce resource? Isn't this one of the particularly valuable slots because it covers both North and South America? Why would the FCC voluntarily give this up?

Answer: The FCC has acted aggressively to preserve the 60° W.L. orbital location for use by a U.S. satellite operator, and is continuing to contest the expiration of the U.S. filing at 60° W.L. at the International Telecommunication Union (ITU). The FCC believes that there is significant ambiguity within the ITU process relating to the determination of the expiration date. Under our interpretation of ITU rules and related ITU actions, the deadline for a timely U.S. filing at 60° W.L. was April 25, 1999. As explained below, the U.S. sought to meet that deadline.

In September 1998—well in advance of the expiration of the nine-year limit under our interpretation of the rules—we notified potential U.S. operators of the impending expiration date in a concerted effort to preserve the U.S. filing at 60° W.L. At the same time, we also initiated correspondence with the ITU, seeking to clarify the expiration date and to extend the life of the filing at 60° W.L. to the full extent possible.

In the meantime, on February 5, 1999, PanAmSat Corporation (PanAmSat) filed a request for Special Temporary Authority (STA) to relocate an in-orbit satellite to 60° W.L. It was aware of the uncertainty of the filing status at the ITU at that time. On April 1, 1999, the FCC granted PanAmSat's request to locate at 60° W.L. for sixty days. The satellite, which was moved from another orbital location, reached

60° W.L. on April 12, 1999. Thereafter, PanAmSat filed a request for STA to operate from 60° W.L. for a period of 180 days. On April 13, 1999, the FCC put that STA on Public Notice. On April 21, 1999, we granted PanAmSat interim temporary authority to operate from the 60° W.L. location for 60 days. In order to preserve the right of the U.S. to use 60° W.L., on April 21, 1999, the FCC submitted the requisite information to the ITU in order to complete the satellite notification process at 60° W.L. prior to the April 25, 1999 date.

At the same time, we have pursued procedural remedies within the ITU to clarify the status of the 60° W.L. location. On March 12, 1999, the ITU notified the United States by letter that the nine-year period lapsed in June of 1998, and that the U.S. filing would be cancelled. The FCC appealed the decision on March 22, 1999. That appeal was denied. The FCC appealed again to a higher level of the ITU on April 1, 1999. That appeal also was denied. We are continuing to explore further possible appeals so as to preserve this orbital location for a U.S. operator.

Question: Much of what we are talking about today is how to revamp the FCC for the 21st Century. We are all looking for ways to get out of the way of electronic commerce or enhance it where we can. With that in mind, I understand the FCC has asked for input on whether or not companies should be allowed to sign up customers for long-distance service over the Internet. Assuming there is personally identifiable information given voluntarily by a consumer (such as a credit card number), shouldn't the FCC take this opportunity to enhance E-commerce by recognizing a change in service request obtained over the Internet? I would like to hear from each Commissioner on this point.

Answer: (Chairman Kennard) The Commission's recently adopted slamming rules require that all carrier changes be verified in accordance with one of three methods: written Letter of Agency (LOA), electronic authorization, or independent third-party verification. These requirements were adopted by the Commission, pursuant to Congress' directive in section 258 of the Telecommunications Act of 1996, in order to ensure that all changes in consumers' preferred local and long distance carriers have been knowingly authorized by the customer.

The Commission recognized in that *Order* that many carriers recently have begun to utilize the Internet as a marketing tool to gain new subscribers and that such solicitation can be an effective and efficient method of making these services available to the public. The Commission expressed concern, however, as to whether carriers using the Internet to sign up new customers were complying with the Commission's verification requirements so as to ensure consumers utilizing this method are afforded the protections from slamming intended by the Act and Commission rules. For example, the *Order* noted that, absent adequate verification procedures, a consumer surfing the Internet could inadvertently sign up for a switch in long distance service or could be misled into signing up for a contest that actually results in a long distance carrier switch.

Accordingly, the Commission sought comment on whether further modifications to the existing verification rules were necessary in order to encourage the efficient use of the Internet to request carrier switches, while still protecting consumers from fraudulent practices such as slamming. In particular, the Commission sought comment on its tentative conclusion that electronic signatures used in Internet submissions of carrier changes would not comply with the signature requirement for LOAs required under existing rules because they fail to identify the signer as the actual individual whose name has been signed on the Internet form and they fail to ensure that individual is the person actually authorized to make the decision to change carriers. Unlike a signed LOA or recorded third-party verification, an electronic LOA, without additional personally identifiable information, does not appear to provide tangible evidence of authorization that can be challenged by the consumer.

Therefore, in order to enhance the ability of companies to use electronic commerce for this purpose, the Commission specifically sought comments from the industry and consumer groups as to what additional information provided by the customer during such transactions would be sufficient to verify that the consumer had authorized a carrier switch, as mandated by section 258 of the Act. For example, we asked whether obtaining a subscriber's credit card number, social security number or mother's maiden name would provide sufficient proof of a valid verification without jeopardizing the subscriber's privacy. the comment period on this *Further Notice* has closed, and the Commission expects to act soon to take whatever further action is deemed necessary to facilitate the use of Internet commerce in this area.

Answer: (Commissioner Ness) I agree that we should be looking for ways to enhance electronic commerce, and that the Internet can be a valuable tool for making telecommunications services available to the public. Allowing carriers to sign up customers over the Internet, however, raises some concerns. Congress and the Commission both have been inundated with complaints about slamming, that is, the un-

authorized change of a customer's choice *of carrier*. We need to ensure that changes in service providers occur only when they are requested by a person who is authorized to make the request. The challenge is to make it easy for *appropriate* changes in service providers, while making it difficult for *unauthorized* changes to be made. Given all of the fraud and confusion that we have seen lately, I believe that we should proceed with caution—and cannot assume that every carrier change requested via Internet is an authorized change.

Answer: (Commissioner Furchtgott-Roth) I support the Commission's decision to ask industry and consumer groups what additional information provided by a customer should be sufficient to verify that a consumer has authorized a carrier switch, as mandated by section 258 of the Act, thereby enhancing the ability of companies to utilize electronic commerce.

Answer: (Commissioner Powell) I generally subscribe to the views expressed by Chairman Kennard in his response to this question. As part of the Commission's recently-adopted "slamming" rules, we have already sought and received comment on whether modifications of our verification requirements for carrier changes were necessary to encourage the efficient use by consumers of the Internet to select new providers, while still protecting consumers from being switched to a new carrier without their consent. I look forward to working closely with my colleagues to address the concerns raised in these comments and thereby enhance consumers' ability to use electronic commerce to request changes in telephone service.

Answer: (Commissioner Tristani) I fully support efforts to enhance the availability of the Internet as a viable, effective means of commerce. Indeed, the Commission's recent inquiry into the use of the Internet by carriers to sign up new customers is intended to examine whether the Commission needs to make modifications to its carrier switch rules in order to allow for this type of e-commerce, while continuing to ensure that consumers are adequately protected from slamming and other frauds.

The Commission's recently adopted slamming rules require that all carrier changes be verified in accordance with one of three methods: written Letter of Agency (LOA), electronic authorization, or independent third-party verification. These requirements were adopted pursuant to Congress' directive in section 258 of the Telecommunications Act of 1996, which mandates that no carrier may submit a request to switch a customer's local or long distance presubscribed carrier without first verifying the consumer's authorization in a manner prescribed by the Commission.

In the *Further Notice* section of the Slamming *Order*, the Commission noted that many carriers recently have begun to utilize the Internet as a marketing tool to gain new subscribers and that such solicitation can be an effective and efficient method of making competitive telecommunications services available to the public. The *Order* raised questions, however, as to whether carriers using the Internet to sign up new customers were fully complying with the Commission's verification requirements so as to ensure that consumers utilizing this method are afforded the protections from slamming intended by the Act and Commission rules. The *Order* expressed particular concern as to whether the electronic signatures used in Internet submissions of carrier changes comply with the signature requirement for written LOAs. Unlike a signed LOA or recorded third-party verification, an electronic LOA, without additional personally identifiable information, does not appear to provide tangible evidence of authorization that can be challenged by the consumer.

The Commission sought comment on whether further modifications to the Commission's verification rules are necessary in order to encourage the efficient use of the Internet to request carrier switches, while still protecting consumers from fraudulent practices such as slamming. The Commission specifically sought comments from the industry and consumer groups as to what additional information provided by the customer during such transactions would be sufficient to verify that the consumer had authorized a carrier switch, as mandated by section 258 of the Act. The comment period on this *Further Notice* has closed, and I expect the Commission to act soon to take whatever further action is deemed necessary to facilitate the use of Internet commerce in this area.

Question: Why would an electronic LOA (letter of agency or registration for service) be any less reliable than a signature sent on a piece of paper or a recording of a consumer's voice claiming to want the service? People can misrepresent a signature or record a voice that is not that of the customer. Isn't an electronic LOA with personally identifiable information actually more secure?

Answer: (See answers to above question.)

QUESTIONS FOR THE RECORD FROM REPRESENTATIVE SHIMKUS

Question: The Commission recently voted to move ahead with a proposed rulemaking on low-power FM. I have some concerns that in doing so, the FCC is seem-

ingly willing to ignore the potential impact such a new service would have on the quality of the existing FM band.

What technical evidence does the FCC have to show that adding hundreds or thousands of these mini-stations won't erode the quality of the FM band? What studies have you conducted? Aren't we putting the cart before the horse here?

Answer: The Commission has issued a *Notice of Proposed Rule Making* concerning a possible low-power radio service, but it has not yet reached any conclusions in this matter. In reviewing the record in this proceeding, of course, the Commission will consider very carefully the potential impact of a new low-power radio service on the reception of existing radio service. This is a threshold issue of the rulemaking proceeding which we will examine closely.

I and every one of my colleagues on the Commission have firmly and repeatedly stated our individual and collective belief that one of the Commission's primary mandates is to guard the technical integrity of the spectrum, not to degrade it, and that before any one will conclude that a new service is feasible, we must be satisfied that the technical issues have been adequately addressed.

At the same time, it is our duty to see that the great natural resource that the radio spectrum represents is fully exploited for the benefit of the public, and to examine ways in which it can be more efficiently utilized. We are currently conducting testing to ascertain whether certain station-locating principles we have used for full-power stations may be unnecessarily preclusive for low-power stations. We also expect to receive the results of testing and analysis from other interested parties and qualified experts as a result of our rulemaking *Notice.*

Question: Isn't it true that in your own proposal and your table of stations, you admit that the only way to create any new stations in major metropolitan areas is by changing the 2nd and 3rd channel interference protections currently in place? How can the Commission support a proposal that would diminish the audio quality of the current FM service?

Answer: The successful implementation of a low-power radio service may depend in significant part on whether the Commission can modify certain of its station separation requirements in the context of low-power stations. The Commission has successfully employed modified station separation standards in limited instances in the past to permit improvements to some existing full-power stations without degrading audio quality. We intend to study and test whether these principles can be safely applied to a low-power radio service.

Question: What about the impact on in-band, on-channel digital radio? My understanding is that the digital channel will be added on the sides of the main analog channel, and therefore will be more easily disrupted by interference from adjacent channels if this proposal goes forward. Why are we willing to throw out the potential of digital radio just to license some more people to have radio stations? And why was the microradio issue taken up before the digital audio broadcasting rulemaking now awaiting action was resolved?

Answer: The Commission will take care to preserve the opportunity for terrestrial digital audio radio service in the event it establishes a low-power radio service. The Commission has yet to determine the best method for transitioning to terrestrial digital radio, and an in-band on-channel (IBOC) methodology is a significant possibility. Multiple IBOC and terrestrial digital radio systems at varying stages of development are still being worked on, analyzed, tested and refined by the industry, and the technical architecture of any system will ultimately be a function of the radio environment in which it will operate.

The Commission has made a firm commitment to developing terrestrial digital radio service, and we intend to do so as promptly as possible. We have issued several experimental authorizations to IBOC proponents to test their technology and develop their systems. We have already received comments on a petition filed by one of the IBOC proponents, and Commission staff is consulting with industry groups as part of the process of beginning a rulemaking proceeding. However, while we intend to open a rulemaking proceeding as soon as is practicable, it is possible that the rulemaking process, particularly with competing undeveloped technologies at present, could take some time to complete.

If we can reliably establish parameters that will preserve necessary flexibility for terrestrial digital audio, we should not unnecessarily delay the introduction of low-power service for the public. We have specifically asked in the low-power rule making for comment and expert input on what measures are appropriate to maintain appropriate flexibility for a transition to digital, including potential IBOC systems, and have recently extended the lengthy original comment deadlines in the low-power radio proceeding to provide opportunity for additional input on this issue.

Question: Aren't there frequencies now in smaller markets that people can apply for? What happens to those people already awaiting processing for full-power sta-

tions—why is it fair to leapfrog those folks who've been waiting patiently for stations and suddenly create a whole new class of service out from under them?

Answer: There are a limited number of FM stations available in certain small markets, but this is not universally so. Many small communities with any proximity to a larger metropolis do not have full-power frequencies available. Even where full-power frequencies are available, full-power facilities can be unnecessarily and even prohibitively expensive to build, and may not be supportable by the local market.

The Commission expects to resolve the issues that have prevented the processing of certain new FM applications and begin that processing by this fall. This will be long before any low-power applications would even be filed, if such a service is authorized. Our ability to resolve these applications is unrelated to the low-power proceeding. Moreover, for applicants seeking to provide a full-power service, low-power facilities would be a far less desirable or even unacceptable alternative.

Question: Mr. Furchtgott-Roth, you were the only commissioner to oppose this proposal. Can you explain to this subcommittee why you had concerns about it?

Answer: (from Commissioner Furchtgott-Roth) I write in response to your follow-up question regarding my decision to dissent from the Commission's recent *Notice of Proposed Rule Making* on low-power radio stations. Below, I set forth my reasons for taking this position.

As an initial matter, I am not opposed to the creation of a low-power radio service. Whatever new service can be provided within the range of existing interference regulations would be something worth considering. I do not believe that the Commission should create new stations at the expense of current interference protection standards, however.

As the appendix attached to the Commission's *Notice of Proposed Rule Making* itself showed, under existing interference rules the Commission can authorize so few new stations that the results would hardly warrant the effort. In order to create any substantial amount of new service, protection standards have to be loosened so far as to eliminate third and even second adjacent channel safeguards. This is a severe incursion on the rights of current license holders, as well as on the value of their licenses, which will be drastically undercut in the market if these proposals are adopted.

This proposal also potentially impairs the ability of current licensees to serve their listeners, who must not be forgotten; while new people may be able to broadcast, others may lose their ability to receive and listen to existing stations due to interference. It especially troubles me that the Commission has made no effort to assess, much less quantify, the effect on existing stations of eliminating these safeguards.

Even if the second and third adjacent channel protections were wholly eliminated, however, very little new service would be created in the major urban markets at which this proposal is supposedly aimed. For instance, in New York City, there would be no LP1000 stations and no LP100 stations, and in Los Angeles there will be only one LP1000 station, no LP100 stations with translator protections and six LP100 stations with unprotected translators. In addition to their small number, these services will be relatively unavailable to mobile audiences due to their low wattage.

Furthermore, while many proponents of this rule making see it as a means of increasing broadcast ownership by minorities and women, there is in all likelihood no constitutionally sound way to assure such a result. There is simply no way that the Commission can say that, if a first-come, first-served rule is adopted, these licenses will not be awarded to whoever applies for them first or that, in the case of mutually exclusive applications, these licenses will not go to the highest bidder.

Also, the creation of low-power radio by elimination or modification of current interference rules may also have an adverse effect on the FM radio band itself by hindering the development of new, advanced services such as in-band, on-channel digital radio.

Plans for the delivery of this service have been based on current interference standards, and it is unclear whether these plans can be successfully modified should those standards change. While the rest of broadcasting (indeed the entire communications industry) moves toward the advantages of digital technology, this contemplated FCC policy may make it harder for the FM radio band to keep up.

Moreover, communicating with one's community or expressing a point of view—the posited aim of low-power advocates—can be achieved through a variety of ways other than the creation of microradio. People can communicate with others by obtaining extant commercial or noncommercial licenses, the purchase of air time on broadcast properties, leased access and/or PEG cable schemes, amateur radio, e-mail, Internet home pages, bulletins and flyers, and even plain old-fashioned speech. The notion that a message must be broadcast over radio spectrum before its speaker

has a "voice" overlooks the realities of modern life. Indeed, as time goes on, broadcasting has faced increasing competition, becoming less and less powerful a medium. It is no secret that the television broadcast networks are attempting to find innovative ways to deal with decreasing viewership in the face of cable, DBS, and other video delivery and entertainment systems that compete for the public's attention.

And, of course, Commission enforcement of rules and regulations applicable to the new stations will be an administrative drain and involve the Commission in micromanagement of the smallest of operations. Thus, the low power proposal does not do much to advance its supposed goals. What minimal furtherance of those goals it would achieve comes at great cost to current license holders and listeners. Good—arguably better, even—alternatives for the dissemination of messages in America certainly exist. And the administrative burdens on the Commission will likely be great. Accordingly, I do not think this proposal represents an efficient use of radio spectrum. In addition, I do not view concern about the effects of consolidation in the radio industry as the result of the 1996 Telecommunications Act as an appropriate motivation for this Commission to create low-power radio stations. These are, at bottom, arguments against consolidation. Congress, however, made the clear policy choice to lift national ownership limits. Whatever the results of that choice, they are the function of Congress' elected course, and this Commission must follow it.

In sum, given the potential harmful effects on current licensees and their listeners; the limited benefits of creating a low-power radio service; the burdensome regulations placed on the new stations; the new enforcement duties for the Commission; and the availability of alternatives for communication, I do not believe that the pursuit of this proposal comports with the Commission's statutory duty to "make available . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service." 47 USC section 151 (emphasis added). Please do not hesitate to contact me if I can be of further assistance.

Question: The idea behind this microradio proposal is to give people the chance to get into the radio business that couldn't afford to buy an existing station. How can the FCC predict who will get these licenses? And is there any evidence that even with low-power FM licenses, the pirate problem will go away?

Answer: The Commission has received thousands of inquires regarding low-power radio stations prior to and since the publication of its *Notice of Proposed Rule Making.* Schools of all types, various kinds of community groups, churches, music associations, a wide variety of individuals, political activists and others have made inquiries, expressed a strong interest, and are participating in the rule making. We believe it is reasonable to infer from this that such entities would participate in low-power radio, if it is authorized. While some illegal activity may persist from those who simply must defy authority, we fully expect that the availability of legal facilities will remove a primary incentive for illegal radio operations. In any event, the Commission will continue to vigorously enforce the prohibition against operating a broadcast station without a license.

Question: How will the FCC have the resources to oversee this new group of stations, most of whom will not have run a radio station before or care about operating under regulations?

Answer: One of the significant technical issues raised in the *Notice* is the type of equipment to require for low-power radio licensees. Certified equipment, with strict technical specifications should reduce the likelihood of signals that "wander", cause interference, or cause unwanted signals on other frequencies. Also, because we maintain data on licensees such as frequency, power, and location, the Commission can quickly contact a licensee if technical problems occur. Additionally, the likely reduction in illegal operations if low-power radio is authorized should ease that demand on our resources.

We must expect that low-power licensees, as any others, will be conscientious about learning and performing their responsibilities. Nonetheless, enforcement begins with making sure that licensees are informed of their responsibilities. For licensees that are new to any service, the Commission already provides multiple avenues for licensees to learn their responsibilities. We also will consider how to develop a pro-active means of effectively informing licensees of their responsibilities. The Office of Communication Business Opportunities (OCBO) provides information to small businesses, especially those that are new to the communications industry. Information is also available on the Commission's Internet site and from the National Call Center, as well as from the Mass Media Bureau. The Commission can also provide assistance as it does with its other broadcast licensees through its current Alternative Broadcast Inspection Program (ABIP). The Commission's Compliance and Information Bureau also provides checklists on its home page on the Commission's website, www.fcc.gov, that a licensee can use to conduct self-inspections. In addition, based on our experience in the rulemaking proceeding and our knowl-

edge of illegal operations, we expect that there will be quite a network of information exchange on the Internet within the low-power community. As stated above, we will also search for effective means of educating licensees as part of the application or licensing process.

QUESTIONS FOR THE RECORD FROM REPRESENTATIVE BLUNT

Question: On July 8, 1998, the Missouri Municipal League, the Missouri Association of Municipal Utilities, City Utilities of Springfield, City of Columbia Water and Light, and the City of Sikeston Board of Utilities filed a petition for preemption with the FCC, seeking preemption of section 392.410(7) R.S.Mo. (CCPol Docket No. 98-122). Responses have been made by all interested parties and the parties are waiting for a decision by the FCC. Is there a time frame for making this decision by the FCC, and when can the parties expect a decision?

Answer: I would like the Commission to issue a decision in the *Missouri Preemption* proceeding early this Fall if at all possible. Regardless of other competing priorities, I expect the Commission to take action in this proceeding before the end of 1999.

Question: It is my understanding that you have concerns about the limitations that states have placed on municipal electric utilities in telecommunications. A Missouri law, section 392.410(7), is an example of such a limitation. A copy of this law is attached for your information. Would it be fair to say that this is the type of state law that concerns you?

Answer: I am concerned about the enactment of state statutes prohibiting the provision of competitive telecommunications services or facilities by municipalities or municipal utilities. I believe that enactment of such statutes by the states is generally undesirable as a matter of public policy because they eliminate a strong potential competitor from the market. This can have a particularly undesirable effect on rural areas where municipal utilities may be the most likely source of facilities-based competition. At the same time, I believe that the Commission must tread very carefully in considering requests for preemption of such statutes under section 253 of the Communications Act.

Question: You have been quoted as saying that there have been some problems in the courts that haven't allowed some of these municipal utilities to provide telecommunications services. Has the FCC made any decisions that would preempt a limiting state law and would allow a municipal utility to provide telecommunications services?

Answer: To date, the Commission has not preempted state laws restricting the provision of telecommunications services by municipal utilities. In the *Texas Preemption* proceeding, the Commission declined to exercise its section 253 authority to preempt a Texas statute generally prohibiting municipalities from providing telecommunications services or facilities. The Commission concluded that it was not clear that Congress intended the Commission to intrude into the relationship between the State of Texas and its municipalities. This decision was upheld by the U.S. Court of Appeals for the D.C. Circuit. The Commission's decision in the *Texas Preemption* proceeding, however, specifically reserved the question of restrictions on municipal utility entry for future consideration. This question is now before the Commission in the *Missouri Preemption* proceeding.

Question: You have been quoted as testifying before the Senate Judiciary Subcommittee on Antitrust, Business Rights and Competition, that you "think that we ought to continue to work hard to open up every competitive avenue, if we can." Is this an accurate statement of your testimony, and if so, do you believe that the FCC should continue to work hard to open up competition in telecommunications services?

Answer: I strongly support the competitive provision of telecommunications services, and believe that the Commission must continue to work hard to remove barriers to competition. It is my experience that competition benefits consumers by increasing the choices available to them, fostering the deployment of new technology, and bringing downward pressure to bear on prices.

Question: Do you share the belief stated by others that letting electric utilities compete in telecommunications was a key part of the Telecommunications Act of 1996?

Answer: I agree with this statement and envision electric utilities as becoming formidable competitors in the provision of telecommunications services.

Question: Do you understand that the legislative history of the Telecommunications Act of 1996 evidences the fact that there was an intent by Congress to let municipal utilities compete in telecommunications?

Answer: Our staff is considering the legislative history of the 1996 Act as part of its review of the public record we have developed in the *Missouri Preemption* proceeding. I am reluctant to address this issue while that matter is pending, but I will be glad to respond to this question fully at the appropriate time.

Question: Section 253(a) of the Telecommunications Act of 1996 is clear that state and local laws cannot "prohibit . . . any entity" from providing telecommunications services. Does a publically-owned electric utility fit within the definition of "any entity?"

Answer: In the *Texas Preemption* proceeding, the Commission declined to exercise its section 253 authority to preempt a Texas statute generally prohibiting municipalities from providing telecommunications services or facilities. The Commission concluded that Texas municipalities were not entities separate and apart from the State of Texas for purposes of section 253 of the Communications Act. The Commission also found it was not clear that Congress intended the Commission to intrude into the relationship between the State of Texas and its municipalities. This decision was upheld by the U.S. Court of Appeals for the D.C. Circuit. The Commission's decision in the *Texas Preemption* proceeding, however, specifically reserved the question of restrictions on municipal utility entry for future consideration. This question is now before the Commission in the *Missouri Preemption* proceeding. I am reluctant to address this issue while that matter is pending, but I will be glad to respond to this question fully at the appropriate time.

Question: What is your view of the obligation which the FCC has under section 253 of the Telecommunications Act to preempt state or local laws or regulations which serve as barriers to entry?

Answer: Commission preemption of state and local laws and regulations that violate section 253 is mandatory, assuming compliance with the substantive and procedural requirements of that section. I believe that the Commission's authority under section 253 to preempt state and local requirements that prevent competitive entry is a vital element in ensuring realization of Congress' vision of local exchange competition. At the same time, I believe that the Commission must use preemption of state and local actions cautiously as a last resort. I note, for instance, that Congress specifically preserved certain authority for state and local governments in the areas of universal service, public safety and welfare, quality of service, consumer rights, and management of rights-of-way, to the extent such authority is exercised in a competitively neutral and nondiscriminatory manner. Further, Congress authorized FCC preemption of state and local requirements that violate section 253 only "to the extent necessary to correct the violation . . ." I believe the Commission has implemented section 253 consistent with these criteria and must continue to do so in order to further the pro-competitive goals of the 1996 Act.

QUESTIONS FOR THE RECORD FROM REPRESENTATIVE ESHOO

Question: Chairman Kennard, you mention in your testimony that your fourth goal during the transition to competition is to bring consumer services and technology to every American. With over 60 million people using wireless phones today, the FCC has a role to play with industry and other government agencies, to ensure that our nation's Emergency 911 service is reliable 100 percent of the time. Where does E-911 fit within your view of the 21st Century FCC?

Answer: I agree with you that there is an important role for the Commission to play in ensuring that all Americans have access to reliable and efficient wireless 911 services as we move into the 21st Century.

A core obligation given to the Commission by the Congress in the Communications Act of 1934 is to promote the safety of life and property through the use of telecommunications services. Fulfilling this obligation is a cornerstone in the transition to a more competitive telecommunications marketplace. For these reasons, it is critically important that the Commission continue its efforts to work with the public safety community, emergency service providers, consumer groups, other Federal agencies with an interest in public safety issues, and the wireless industry in order to forge an alliance dedicated to working for improvements in the availability and dependability of wireless 911 service.

As you know, in the wireless E911 rulemaking proceeding, CC Docket 94-102, the Commission has developed rules that require wireless carriers to improve 911 service. As a basic 911 requirement, wireless carriers are now required to forward all 911 calls they receive to a Public Safety Answering Point, without delays for validation or the blocking of calls from non-subscribers. At the Commission's Agenda Meeting on May 13, 1999, the Commission adopted rules to improve the ability of analog cellular telephone users to successfully complete 911 calls. One of the important issues in the wireless E911 proceeding concerned proposals to help improve the

transmission of 911 calls, especially in geographic locations where a wireless caller attempts to make a 911 call but the cellular system to which the caller subscribes has a "blank spot"—an area where the system's radio signal is weak or non-existent. The Commission on May 13, 1999 adopted a requirement that new analog cellular-capable handsets manufactured starting in February 2000 be able to complete 911 calls to the other cellular carrier in those situations. The purpose of this new rule is to improve 911 reliability, increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies, and help ensure that wireless service will be maintained for the duration of the 911 call.

The Commission bears a continuing responsibility to ensure that we harness the benefits of emerging technologies for wireless 911 service. To take one example, our rules require carriers, beginning in October 2001, to provide location information for wireless 911 calls, with accuracy within 125 meters. Our challenge is to foster the development and application of wireless technologies that can improve upon this level of accuracy, and can also provide information about the precise location of callers in multi-story buildings.

As we move into the 21st Century, we should continue our active involvement in working toward achievement of our fundamental goals for wireless 911—increased levels of call completions, reliable and dependable service quality, and pinpoint accuracy in locating wireless 911 callers.

I appreciate your active involvement in this proceeding and assure you that the Commission will continue its commitment to promote public safety.

Question: Chairman Kennard, please cite specific examples that fit your fifth goal of fostering innovation. Do you have any specifics to tell us about relative to development and deployment of high-speed Internet connections to all Americans?

Answer: High-speed Internet connections are one form of—and so far the most popular form of—what we call "broadband" or, in the words of section 706 of the 1996 Act, "advanced telecommunications capability." Recently, the Commission issued a Report finding that the deployment of broadband to all Americans appears, at this initial stage, to be proceeding in a reasonable and timely manner.

The single most important thing the Commission has done to get such connections built and used by Americans is to adopt a policy of open entry into all forms of local and long distance communications. As a result, in the past few years tens of billions of dollars have been invested in broadband facilities by incumbent and competitive local exchange carriers (LECs), long distance companies, satellite companies, cable television providers, public utilities, and all kinds of wireless licensees (fixed and mobile, land-based and satellite, licensees of longstanding and recent winners of auctions of newly allocated spectrum).

The history of this business over the last thirty years has shown that competition leads to widespread, low-priced, high-quality, and technically innovative service faster than monopoly or oligopoly. Especially in a market where different technologies may serve different areas and different customer needs best, the Commission wants to avoid picking one technology and one set of companies as its chosen instrument.

The Commission is taking targeted action to facilitate high-speed Internet connections, and broadband in general, in many specific proceedings. For example, we are considering the issue of access to the "last hundred feet" in multiple dwelling units (MDUs) such as apartment buildings in several proceedings.[1] We are moving ahead with proceedings that promote the deployment of wireline broadband services[2] and the commercial availability of "set top box" navigation devices.[3]

In addition, we are pursuing initiatives to ensure that wireless services, both fixed and mobile, are true competitors in the consumer market for broadband. We will continue to allocate, auction, and license more spectrum for uses that include

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[1] For example, WinStar has requested that we apply section 224 of the Communications Act, governing regulation of pole attachments, to require public utilities to make rooftop facilities and related riser conduit owned or controlled by the utility available to competing providers of communications services. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *WinStar Communications, Inc., Petition for Clarification or Reconsideration* (filed Sept. 30, 1996). *See also Inside Wiring Report & Order & Second Further NPRM,* 13 FCC Rcd at 3778-82.

[2] *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *Memorandum Opinion & Order & Notice of Proposed Rulemaking* FCC 98-188, released Aug. 7, 1998, *available at* 1998 WL 458500.

[3] *See, e.g.,* Implementation of section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, *Report & Order,* 13 FCC Rcd 14775 (1998).

broadband, especially facilities that serve the last mile and last hundred feet.[4] We are also encouraging the next generation of mobile services and are re-examining our 45 MHz CMRS spectrum cap.[5] We are working for efficient international harmonization of spectrum allocations, product certifications, and technical standards for interfaces. Moreover, we will promptly grant licenses so that broadband facilities can be built promptly.[6] We will continue authorizing broadband capacity for traditional geostationary C- and Ku-Band frequencies. We also expect to license new, innovative systems in the Ka- and millimeter wave Bands.[7]

Lastly, the Commission is monitoring on a continual basis the appearance of chronic shortages of high-speed Internet connections and other forms of broadband in rural areas, low-income inner city neighborhoods, for the disabled and for educational and health-care facilities.

I am strongly committed to bringing high-speed Internet access to all Americans and will do all that I can as Chairman of this Commission to make that goal a reality.

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[4] *See, e.g.,* Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, ET Docket No. 98-237, *Notice of Proposed Rulemaking & Order* FCC 98-337 at ¶¶ 1, 6, released Dec. 18, 1998.

[5] *See* 1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket 98-205, *Notice of Proposed Rulemaking* FCC 98-308, released Dec. 10, 1998.

[6] For example, the Commission is now in the second licensing round for Ka-band satellites and will rule on 18 requests for licenses and modifications or amendments to existing Ka-band licenses.

[7] *See, e.g.,* Allocation & Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, & 48.2-50.2 GHz Frequency Bands, IB Docket No. 97-95, *Report & Order* FCC 98-336, released Dec. 23, 1998.