

**NOMINATIONS OF JULIUS GENACHOWSKI  
TO BE COMMISSIONER AND CHAIRMAN AND  
ROBERT M. McDOWELL TO BE COMMISSIONER  
OF THE FEDERAL COMMUNICATIONS COMMISSION**

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**HEARING**

BEFORE THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

—————  
JUNE 16, 2009  
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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**TUESDAY, JUNE 16, 2009**

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

The Committee met, pursuant to notice, at 2:30 p.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

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

The CHAIRMAN. I think many more of our members will be arriving, but the cream of the crop is here.

[Laughter.]

The CHAIRMAN. Mr. Genachowski, in welcoming you, I want to say that communications technology is a vibrating, pulsing driver of our Nation, and it has been let to lapse a bit. For our Nation, I think, to meet any kind of challenge, no matter what you look at, if our communications are not perfect, our ways of communicating with each other are not perfect between different strata, different parts of the country are not perfect, we are in lots and lots of trouble, if we are not already.

Because good communications policy will lay the foundation of these noble and hard-to-achieve goals, we need real expertise—expertise—that means people who really know what they are talking about—at the Federal Communications Commission. As I have said before, I believe that being an FCC Commissioner is one of the most daunting, awesome, fearsome, time-consuming, sleep-depriving jobs in Washington, D.C., and I think it is also one of the most under-appreciated and is one of the very most important.

The powers of the FCC are absolutely vast. People have no idea. The decisions that it makes impact every single American one way or another whether they know it or not or whether they care or not. It does. So it has to be done right.

From the bills that we pay for phone and cable services to our ability to reach public safety in times of crisis, that is just a little part of it. From the content that gets broadcast into millions of living rooms throughout America to the broadband networks that can

bring equal opportunities to our largest cities and our smallest rural areas, the FCC oversees it all.

The decisions this agency makes are vital to our Nation's future. Because we entrust FCC Commissioners with these vast powers—oh, I did not let you introduce him, but I will before he speaks—we expect a lot from our Commissioners. We expect a lot. I apologize, Chuck.

Yet over the last decade, the agency has, at least to this Senator, been disappointing. Too often, FCC Commissioners have focused on making sure that the policies that they advocate serve the ideas and the needs of the companies that they regulate and their bottom lines. That is not the kind of committee this should be and it is not what the FCC should be.

Time and time again, the FCC has short-changed consumers and the public interest. The influence of special interests at the agency is especially troubling, even noteworthy, in the distasteful way that they clamor for their preferred candidates for FCC office.

That is why I remain deeply interested in FCC reform, and that is why I continue to weigh the merits of FCC reauthorization. I want an FCC that is transparent, that inspires public confidence, and that makes our digital infrastructure a model for the world. Tragically, this has not been the case for some time.

But if the past has been bleak, we have cause for optimism because I have met the Administration's nominee for the Chairman, that being you. I am thoroughly impressed. Mr. Genachowski brings to the job both public and private-sector experience. He has the enthusiasm for the power of communications, but the tasks before him are complex. The days undoubtedly will be long.

So, Mr. Genachowski, let me be very clear about what the challenge before you is in my view. Fix the agency or we will fix it for you. Fix this agency. Prove to us that the FCC is not battered beyond repair.

Show us that the FCC can put consumers first and give them confidence that when they interact with the agency, they will get a fair response.

Show us that the American people can trust the data that the FCC produces and that it can guide us to good and honest policy.

Show us that the American people can have affordable and robust broadband no matter who or what or where they might live.

Show us that parents can have confidence to view the programming in their homes without their children being exposed to violent and, I would say, indecent content.

Show us that the agency can think beyond its borders. I work with industry and government to create jobs. So does the FCC. We have got to expand entrepreneurship, grow educational resources, and improve health care.

And that is just for starters.

I wind up by saying let me remind you that the Congress and the American people look to you for these reforms.

I thank you for joining us today. I was proud to meet your family, who you must introduce after Senator Schumer introduces you, and your willingness to serve. I am awed by your willingness to serve because you are going to be a lot older when you are finished.

[Laughter.]

The CHAIRMAN. And I look forward to your testimony. I think I should let the Ranking Member go first.

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

Senator HUTCHISON. Mr. Chairman, I do have an opening statement, but I would be happy to let Senator Schumer introduce the nominee. I would be happy to.

The CHAIRMAN. Why do you not go ahead? Please go ahead.

Senator HUTCHISON. OK.

Mr. Chairman, thank you. Thank you for holding this hearing. I have met with Mr. Genachowski and I too am very impressed. I think he certainly has the capability to handle this job, and it is a big one, as the Chairman has said eloquently.

I want to talk about a couple of areas that I think are very important and where the FCC is going to have a major role.

Of course, broadband. We know that there was a major commitment to broadband help in the stimulus package, and the FCC is currently putting together a broadband map. I believe it is so important that we assure that everyone has broadband access before we go into underserved areas. Unserved should come before underserved as a matter of a level playing field where some have already made an investment, but also because our rural areas must be able to have broadband before we go into an area that has some but not enough.

Second, broadcasters have certainly been through a technology revolution, and they have provided invaluable services to our Nation. I just hope that we will not overburden broadcasters as they are trying to deal with the increased competition in their field with new regulatory burdens and reporting requirements that would just make it more difficult for them to thrive in this market.

I do think that the FCC has a major role to play in enforcing decency over the airwaves. I am the mother of two young children, and I am amazed at some of the things that are on networks that are supposed to be OK for children. I hope the FCC will look carefully at what is appropriate for children and young people as they are looking at the open airwaves that we all appreciate.

Net neutrality is going to be a huge issue for the FCC, and I do want to know what the nominees that we are going to hear from today will believe is the right way to go in any future network management proposals, because I think that it is going to be very important that we again keep the ability of a company to have control of its own Internet workings, and I hope that there would be less interference in that, except where necessary, of course.

And last, Mr. Chairman, copyright protections are a critical aspect of promoting richness in programming and entertainment options. I hope that we will hear from the nominees about their views on what we should be doing in protecting copyrights in the entertainment industry.

So, as the Chairman has said and I think I have filled in some of the details, you have a huge portfolio at the FCC. I think responsible, common-sense regulation is going to be what I am looking for for our FCC Commissioners. I am very pleased that you are here and Mr. McDowell after you.

Mr. Chairman, thank you for holding this hearing.

The CHAIRMAN. Thank you very much, Senator Hutchison.

Now, with the forbearance of the Committee, since we have a most senior Democrat—I forget the State.

[Laughter.]

The CHAIRMAN. But he is very important. He is very shy, and if I do not call on him, he may just leave the room. Senator Chuck Schumer?

**STATEMENT OF HON. CHARLES E. SCHUMER,  
U.S. SENATOR FROM NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman. First, I want to thank you, Ranking Member, all the members for giving me the honor to introduce Julius Genachowski, one of my former staffers and good friends, before he is confirmed to be Chairman of the FCC. I have had the pleasure of knowing Julius for more than 20 years. In fact, after his New York upbringing, he went to college and then I hired him right out of college, and he worked for me long and hard. I have been blessed with a dedicated and hard-working staff, but Julius will always stand out, thanks in large part to the work ethic that his family instilled in him.

His parents, Azriel and Adele, are in the audience today, and I have had the pleasure of knowing them. They can speak volumes about the adoration they have for Julius and his brothers, Joey and Alan, who are also here. And I would like to say hello to his wife, Rachel, and his three beautiful children, Jake, Aaron, and Lilah.

I remember that Julius demonstrated a passion for consumer rights from the day he came to Congress. And one of his signature issues was working on what is now called the Schumer Box, which is what is on all credit card applications. It should have been called the Genachowski Box, but his name was too long, so they put mine in.

[Laughter.]

Senator SCHUMER. But he did most of the work and deserves most of the credit. It helped dramatically reduce credit card interest rates once people knew what they were. They used to be buried in the fine print.

And I know he is going to carry that dedication to consumer rights to his role as FCC Chairman, should he be confirmed by this Committee and by the Senate.

I think it is fair to call Julius a real renaissance man of public service. In addition to working for me, he served on the House Select Committee on the Iran-Contra affair. He has clerked for three Federal judges, including Justices Brennan and Souter. Of course, he has had extensive knowledge of the FCC, where he worked as special counsel to General Counsel William Kennard, who later became Chairman and then to Chairman Reed Hundt. The FCC has been a passion for Julius for a very long time, and it is so nice to see him nominated for the position he knows so well and cares so much about.

His resumé in the public sector demonstrates a widespread knowledge of agency experience, and it gives him a well-rounded background on all the issues that are before the FCC. And he has a great deal that he could—he is a modest fellow, but he could



boast about his private sector work, which demonstrates his understanding of where the Government rubber hits the tech company road and how those two entities must work together to shape the future of telecommunications.

He has held numerous positions at IAC/InterActive Corp. That is a Fortune 500 media and technology company. He was a special advisor for General Atlantic, a global growth equity firm, and most recently, he co-founded both LaunchBox Digital and Rock Creek Ventures, which helped to advise, launch, and accelerate tech companies in their early stages.

So Julius is creative, knowledgeable, and respected, probably as creative, knowledgeable, and respected a nominee that the FCC has ever seen. I admire his ability to blend pragmatism with bold thinking. He knows that telecommunications in an economy that is fundamentally based on interconnectivity is instrumental to job creation and entrepreneurship in the U.S.

The President knows that Julius has the ability to harness telecommunication technology, to shape our country's initiatives from health care to education to energy, and that is why he chose Julius to serve as Chairman of the Technology, Media and Telecommunications Policy Working Group that created the Obama technology and innovation plan.

So I could not think of a more well-prepared nominee, someone who cares more about the agency, someone who has more qualities that will make him live up to the strong and appropriately high challenges that you, Mr. Chairman and Ranking Member Hutchison, have laid before him. And, I am proud to introduce him to this Committee.

Thank you very much for letting me testify.

The CHAIRMAN. Thank you very much, Senator Schumer. We value you greatly, and your presence is most welcome.

I would like to call now on Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Mr. Chairman, I am very pleased today to be here for Mr. Genachowski's nomination. I see his family is here, which is very exciting. I met his young son out by the bathroom, which was also very exciting.

I am very pleased, after meeting with him and just his focus on what he wants to do with the agency. One of my pet peeves is while the agency's website was at one point a really groundbreaking website, I think it has kind of fallen behind and a lot of people complain about access on the website. And I was glad that he wanted to look at that.

I was telling him outside that the DTV transition is going, at least in my State—I will not speak for everyone—better than we thought, and that the FCC Commissioner McDowell and I talked about this on Friday, and the Commerce Department have worked together on this. I think a lot of our fears were unfounded. Of course, there are problems and glitches that will have to be fixed.

Then, of course, just as the other Senators spoke about, the broadband issue is very important to me.

The other thing—did you want to have me ask questions, Mr. Chairman? Are we just doing the opening statements? Is this what we are doing here?

The CHAIRMAN. Did you have a treatise in mind?

Senator KLOBUCHAR. No, I did not. But I was just so happy to get called on to give an opening statement. So I will just finish up here.

The CHAIRMAN. That is fine.

Senator KLOBUCHAR. OK.

The last thing that we spoke about briefly was something that Senator Warner and I have introduced legislation—and we hope other members of the Committee will look at it—called Dig Once. It is the simple idea that if you are going to be building a Federal highway, a Federal road project, and you want to put in conduit for broadband—and we know we want to do this all over the country—that you should be doing it at the same time. Literally something like 90 percent of the cost of broadband installation is that of roadwork, and you can literally save about 10 times the cost if you simply do it at the same time.

It certainly was popular in my State yesterday when they were dealing with the road construction season in Minnesota with all of the orange cones, delays and closed highways. I hope it is something that the FCC will be taking very seriously.

So I wanted to wish you and your family the best. We are very excited for your new leadership at the FCC, and we are excited to be working with you. Thank you.

The CHAIRMAN. Thank you.

Senator Pryor?

**STATEMENT OF HON. MARK L. PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you, Mr. Chairman. I will just submit my opening statement for the record, but I want to welcome Mr. Genachowski to the Committee.

Mr. Chairman, it is good to have you back in the saddle, feeling 100 percent and running this committee like you should be.

Thank you.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF HON. MARK L. PRYOR, U.S. SENATOR FROM ARKANSAS

I want to express my congratulations to you both on your nomination, and re-nomination to service on the Federal Communications Commission.

We need a Commission that can ensure that our Nation's communications infrastructure is sufficient to reach all consumers.

We need a plan on how we can deploy high-speed broadband to rural America as an essential element of education and economic development.

Last, I believe it is the role of the FCC to use technology to empower parents to choose appropriate programming—rather than to judge or prohibit content.

The CHAIRMAN. Thank you, sir.

Senator Udall?

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman. Let me also echo what Senator Pryor said about having you back in the saddle. It is good to see you up there, see you vibrant and strong, and we very much appreciate your leadership on this Committee.

The CHAIRMAN. Do I have to ride horses?

[Laughter.]

Senator UDALL. If you come to my State, you are going to ride a horse. OK? We will saddle you up and you will do just fine. No doubt about it.

I would like to echo also what the Ranking Member, Senator Hutchison, said about broadband, and I think Senator Klobuchar and Mr. Genachowski also mentioned it. It is so important, I think, that we get the country connected. If we look at the various points in our history where we were not connected, with the railroads in the 1880s, we made a major investment, and we encouraged railroads to serve the entire country. Then with FDR in the 1930s and 1940s, we realized we were not connected in terms of electricity, and we brought electricity to rural areas with rural electric co-ops. I really hope that your tenure at the FCC shows the leadership to lead out on broadband.

And I applaud Senator Warner and Senator Klobuchar for their bill in thinking through how we put this in.

One of the areas I would like you to think about and address in your opening statement is Indian Country. We have some real problems out there in terms of, not only broadband, but telephones.

I remember when President Clinton was trying to demonstrate the digital divide, and I think I told this to you in our meeting. He started out in the Silicon Valley and he ended up in Shiprock, New Mexico. And the young lady who introduced him was a star student. She got up and did the introduction, and she talked about how she won a computer. Then she took it home, but she did not have a phone line. She did not have the ability to plug it in. And he used that trip from the Silicon Valley to Shiprock, New Mexico out on the Navajo Reservation to show the huge digital divide.

So I hope that your leadership there will move us down the road, and this Committee will also step up to the plate.

It is wonderful to see you here. As Amy said, it was wonderful to see that tie on your son out there.

[Laughter.]

Senator UDALL. He is a very impressive young man. I do not know where he is. You are going to introduce him, but he seems to have disappeared.

Mr. GENACHOWSKI. He is still preparing.

Senator UDALL. But thank you very much. Thanks, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator JOHANNIS?

**STATEMENT OF HON. MIKE JOHANNIS,  
U.S. SENATOR FROM NEBRASKA**

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

I cannot be here for long today because of some other commitments, but I did want to stop by and offer a few thoughts.

First of all, Mr. Genachowski, we have not had an opportunity really to meet or to talk at any length. So I look forward to that opportunity.

But I have to tell you, looking at your background and your resume, two things come to mind. The first is, congratulations on kind of a remarkable career. You have prepared yourself well for what you are about to get yourself into, which is a job with huge responsibility. Second, it just occurs to me if you are not qualified for this, I do not know who would be qualified.

So I really wish you the very, very best and look forward to working with you on a whole range of issues.

So many good things have been mentioned, and I do not want to repeat them other than to indicate that yes, of course, for me issues like broadband, broadband in rural areas, and sparsely populated areas, would of course be important. Much of Nebraska is that way.

Second, whether we hear about it today—or maybe sometime you can stop by the office—I would love to visit with you about the community advisory boards. I cannot say there is huge controversy out there, but there is some controversy. There is some concern that, you know, if a local broadcaster does not know the community, who could possibly know the community? But again, I do not want to sidetrack during this hearing on the issue. I think this is something that I can visit with you about and I am anxious to do that.

I would also like to hear some thoughts at some point about economic growth in rural areas. I do think the Commission is uniquely situated to help us in more rural States, and maybe it is broadband. Maybe there are some other things that we can do together to try to boost economic activity. I always said as a Governor and as a former Mayor, creating a job in Omaha is vastly different than creating a job in a community of 2,000 people that is in a very rural part of the State. So I would love to visit with you about that.

The second thing, just to wrap up, Mr. Chairman, I do also want to put in a very strong endorsement for someone who I hope will be your future colleague, and that is, Commissioner McDowell, who will follow you. I just think the two of you have a great opportunity to work together. I have found Commissioner McDowell to be bright, extremely fair, and open-minded. I think you can create a bond and a working relationship that kind of extends across the aisle, like many of us do on this Committee. I really encourage that and urge it. Looking at your resume, knowing him better than I actually know you at this point, I just think there is a tremendous amount of brain power that, put to work, can really help our great Nation.

The final thing. Having sat in your seat at one point in my career, I just want to say congratulations, and I would say the same thing to Commissioner McDowell. Your family can be so proud of this day. This is really great, and I wish you the very, very best. I am very anxious to work with you in the weeks and months ahead.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator, very much.

Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman.

Welcome, Julius Genachowski. I enjoyed our chance to chat.

When we saw what recently happened, the Federal Communications Commission faced a major test when they moved the entire country from analog to digital. This move promises better programming and picture and sound quality for our residents and businesses, and it will free up space for wireless broadband and public safety needs.

Despite a slow start and a few delays, I am pleased with how successful the transition was, and I look forward to the benefits that it will bring to those residents of New Jersey who had been, in previous years, out of the quality of transmission.

Commissioner McDowell, as well as Acting Chairman Copps, and Commissioner Adelstein, deserves credit for making the transition work. They worked very hard on it, and it was reflected. They showed the kind of leadership that we expect from the FCC.

If you are confirmed—and there is little doubt in my mind—and Robert McDowell is confirmed, we expect them to continue the commitment and the leadership that we have seen. Based on the proven track record, I believe that you will be up to the task.

We heard from Chuck Schumer about your past experience, and we know that he was very impressed with the kind of work that you did and takes total credit for whatever developments you have had.

If these nominees, you and Mr. McDowell, are confirmed, you are going to still have some very critical tasks that have to get attention. Our work on digital transition is not yet done. We need a plan for a public safety broadband network using some airwaves that were freed up by the switch to digital.

And we still need to make our communications system work for the residents of New Jersey. New Jersey is the only State without its own media market. New Jersey's only commercial high-powered station, WWOR, has failed to meet its obligation of our State. So we are going to talk to you about that, and I am not sure that we are going to have the time to ask questions and still meet other obligations in my case.

The FCC is drafting a national broadband plan, getting broadband in underserved communities, not just the underserved rural ones. It is essential that we continue to help people continue to learn, get newer, better jobs, and keep America competitive.

And I look forward to our contact in the future, knowing that we have an able skipper at the helm. And I congratulate you.

The CHAIRMAN. Thank you, Senator.

Senator Dorgan?

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

Senator DORGAN. Mr. Chairman, thank you very much. I am going to support both nominees. Commissioner McDowell, of

course, is nominated for a second term, and I am pleased to support him.

Let me associate myself with the remarks of the Senator from Nebraska. I think, Mr. Genachowski, you have a perfect background to assume the chairmanship, and I will be happy to vote for you.

Let me say, however, that it seems to me you will lead a rather unhealthy agency, and by that, I mean we have been through a period of substantial secrecy, I believe a very difficult work environment and with questions about unbiased policy research studies. Some of them perhaps do not match someone's impression of what should have come out of the studies, so they were not released. A lot of very important, serious questions were raised about the stewardship of the FCC.

So I am pleased that we have an opportunity now for a new direction. Commissioner Copps has, I think, done a fine job in an acting capacity, but we need more transparency, more openness, in policy development. You are going to have to develop a national broadband plan, which is a big, big issue and has so many important considerations. Policies on spectrum, what spectrum out there lies fallow, why, how much of it, why is it not used, what can we do about that, the failed program on forbearance petitions, net neutrality—which by the way, you can solve yourself. We have an active and aggressive debate here in the Congress on net neutrality, but you could actually remove that burden by taking a very significant step in solving that issue and restoring net neutrality provisions.

And then there's the issue of public interest obligations and substantial concentration of broadcast properties around the country, and the fact that many of us think that concentration has been very unhealthy.

So that is a very significant, sizable menu of great importance to the entire country. Again, I am pleased when we have nominees come before us who are extraordinarily well qualified. I think that is the case with you, and I am pleased to support your nomination and Commissioner McDowell's as well.

The CHAIRMAN. Thank you, Senator Dorgan.  
Senator Warner?

**STATEMENT OF HON. MARK WARNER,  
U.S. SENATOR FROM VIRGINIA**

Senator WARNER. Thank you, Mr. Chairman. It is great to have you back, as others have mentioned.

Let me also add one more kudos to Julius' background. I actually had the opportunity to get to know him many, many years ago when we used to play basketball at the YMCA here in town together. Then he stopped playing with me and he started playing with this other guy who now lives down the street at 1600 Pennsylvania Avenue. So it was great over the last few years for Julius and I to reconnect. He has got a pretty mean jump shot and is someone that I know has a deep friendship with the President.

I want to echo a couple of comments that Senator Dorgan made. As somebody who at least used to know a little something about telecom, I do think we have a chance—and I also will be supporting

Commissioner McDowell. I actually have to step away. I hope to come back and to be able to introduce my fellow Virginian, somebody I am proud to support.

But I do think there is a chance to kind of reestablish the stature and prominence of the FCC. It is a terribly important agency that has a critically important scope of work, and I look forward to working with you.

I want to just echo a couple of very quick comments, one on broadband. Making sure we get it right is terribly important. With Senator Klobuchar—her bill is on trying to make sure we think smartly about how we deploy the fiber. But it is also important that we think clearly about making sure that we have got an accurate mapping of broadband capabilities around the country, that we really think creatively about last-mile concerns. Broadband, as you know, does no good if you can bring it to a town hall, but you do not have any ability to get it out around the balance of the community. I think we really need to be creative about how we put incentives in place and help smaller communities, in particular, aggregate demand so they can have a sustainable broadband network, even if the public sector makes the initial investment. How do we keep that system operating over the long haul?

Senator Dorgan also mentioned some of the issues around spectrum. We are quite successful on the D block auctions on the 700 MHz space, but trying to make sure that we have that next-generation public safety spectrum that is fully interoperable is, candidly, I think still an embarrassment in this country that this many years after 9/11, we do not have that fully interoperable, full-functioning public safety spectrum across the whole country. It is going to be right on your menu and making sure, again, as we do this analysis of what spectrum exists out there and how we make sure we get it out to the public and, perhaps at the same time, generate some revenue.

So, Julius, I look forward to working with you. It is great to have you back in the public sector. Again, I have to step away for a minute, but I do hope to get back to introduce my fellow Virginian, Robert McDowell, who I know will continue to be a great Commissioner and a great partner, I think, with Julius in getting the FCC back on track.

Thank you, Mr. Chairman.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF HON. MARK WARNER, U.S. SENATOR FROM VIRGINIA

Good afternoon. I am pleased to introduce my fellow Virginian, Federal Communications Commissioner, Robert McDowell to the Committee this afternoon.

Rob is a native and life-long resident of Vienna, Virginia who joined the Commission in 2006. On June 8, 2009, President Barack Obama nominated him for a second term.

Since coming to the Commission, Rob has collaborated with his fellow Commissioners to develop and establish American communications policy. Among other endeavors, he has worked to: create rules governing wireless auctions; establish a framework for unlicensed use of TV “white spaces” spectrum; develop incentives to encourage the development of new broadband technologies; review public interest benefits as part of the approval process of proposed corporate mergers; and adjudicate enforcement proceedings.

Prior to joining the FCC, he was a senior executive for two telecom trade associations. He brings approximately sixteen years of private-sector experience in the communications industry to the FCC.

Rob is a graduate of Duke University and the Marshall-Wythe School of Law at the College of William and Mary. Upon his graduation from law school, Rob joined the law firm of Arter & Hadden.

Rob has been extensively involved in civic and political affairs in the Commonwealth of Virginia. Between college and law school, he served as a chief legislative aide to a member of the Virginia House of Delegates. He has been a candidate for the Virginia General Assembly twice and is a veteran of several Presidential, Congressional and state campaigns.

He has also served as a gubernatorial appointee to the Governor's Advisory Board for a Safe and Drug-Free Virginia, and to the Virginia Board for Contractors. He has served on the Board of the McLean Project for the Arts since 1994 and was its Chairman from 2005 to 2007.

I want to congratulate my fellow Virginian, Rob McDowell, on his nomination for a second term.

The CHAIRMAN. Thank you, Senator. Senator Begich?

**STATEMENT OF HON. MARK BEGICH,  
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you very much, Mr. Chairman.

I will be very brief, Julius. Thank you for the time that you came and met with me and your commitment to consider coming to Alaska again and see what we are doing up there.

I just want to echo everything that people have said here. Your credentials are incredible and a great addition to the FCC. So there is no question where I am going to be on this.

I have some questions I will probably ask you to put on the record.

But again, thank you for being here and to your family that I know needs to support you in this endeavor, as you will be drawn across the country at times to present, discuss, and have issues brought to your attention that will require you to leave Washington, D.C. at times. So, again, thank you for your willingness to do this, and again, thank you for the time that we spent together going over very Alaskan-type issues. And I will probably ask you a few on the record.

But again, congratulations, and I will leave it at that.

The CHAIRMAN. Thank you, Senator Begich. Senator Kerry?

**STATEMENT OF HON. JOHN F. KERRY,  
U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. Thank you very much, Mr. Chairman. It is good to have you back. I was going to slap you on the thigh and welcome you back, but I did not know which leg it was, so I did not.

[Laughter.]

Senator KERRY. Mr. McDowell, I want to congratulate you on your second nomination to serve on the Commission, and I look forward to supporting you also. I particularly want to express my support. We have had a chance to chat, and I think you know I support you, but I want to express it publicly. I think you are the right person to lead this Commission at a time of great economic uncertainty, and the experience that you bring from your previous tenure at the Commission, as well as your own private-sector experience, is just the right recipe for the Commission during these difficult times.



The FCC regulates, as you know, an industry that makes up roughly one-fifth of the U.S. economy, and I regret to say that the tenure and stewardship, if you can call it that, of your predecessor really, I thought, was a bleak period, a difficult period for all of us at the FCC. I think it is a trail of missed opportunities, of acts of commission and omission that wound up just not taking advantage of the revolution in the communications world and the need to come up with some fundamental policies, not the least of which is just the broadband penetration of our Nation which slipped from something like 4th to 21st. That is not a positive statement about competitiveness or America's preparedness to step up.

You are going to have an enormous influence on industries that we rely upon to serve as dynamic drivers for the future of our economy, and we are going to look to you for that leadership. I am confident from what you have said already and from your past that you understand that challenge.

Obviously, this hearing comes at a time of great transformation in the way that we are communicating with each other in this country. Just 4 days ago, broadcast television stations completed the digital transition, shutting off analog signals that have delivered air broadcast television to households for more than 60 years. That transition did a lot more than just bring a clearer TV picture into those rooms where people got their box and got ready for it. It cleared the way for a vast amount of beach-front spectrum to be put to better use. Senator Dorgan and others have commented on that use and what we need to do. But thanks to the digital switch, next-generation wireless broadband networks are being built across the country and consumers are going to reap the benefits of that.

So when confirmed, you are going to begin to craft the FCC's national broadband plan, and that I think is perhaps the most important task you are going to face as Chairman, given the way we have gone backward and the level of the challenge.

As part of that process, I hope you are going to consider taking a look at the way we manage and allocate spectrum, both publicly and privately, in order to see that we use it more efficiently. I have introduced legislation with Senator Snowe and others on this Committee to require the Commission to work with NTIA on a comprehensive spectrum inventory, and I think that such an effort would play an integral role in any plan for achieving universal broadband service.

There is obviously no shortage of challenges waiting for you as you enter the Chairman's office. The quarterly contribution rate to the Universal Service Fund is as high as it has ever been. Yet, the fund does not cover broadband service. And nearly 8 years after 9/11, shockingly we still have not made good on the 9/11 Commission's recommendation to build an interoperable public safety communications network. So, from addressing these challenges and others, to maintaining the openness of the Internet, which many of us, I think you know, care about passionately, as well as maintaining a laboratory for innovation, I think you are going to see some of the biggest challenges that we have faced in this field, but I am confident that this Commission is up to the task of implementing the President's technology agenda.

So we look forward to a swift confirmation and we particularly look forward to working closely with you. We hope that you will commit in the hearings to a strong, candid, and really cooperative relationship with the Committee.

Thank you.

The CHAIRMAN. Thank you, Senator Kerry.

We turn now to you, Julius Genachowski. For those of you who may be trying to figure out how to pronounce his name, we have had researchers at work for 3 days on that and it is pronounced “chow” not “cowski.” Genachowski.

**STATEMENT OF JULIUS GENACHOWSKI,  
NOMINATED TO BE COMMISSIONER AND CHAIRMAN,  
FEDERAL COMMUNICATIONS COMMISSION**

Mr. GENACHOWSKI. Well—

[Laughter.]

Mr. GENACHOWSKI. We have changed our name. It is Genachowski.

[Laughter.]

Senator KERRY. That is your first victory over the Chairman.

[Laughter.]

The CHAIRMAN. All of these people are going to be laid off.

[Laughter.]

The CHAIRMAN. I would hope that you would introduce your family.

Mr. GENACHOWSKI. Thank you, Chairman Rockefeller. First, thank you to you for your generous introduction—I should proceed to introducing my family before we lose my kids. I could not be happier that my wife, Rachel Goslins, is here and all three of my children, starting youngest to oldest, Aaron Genachowski, Lilah, and my oldest son, Jake are here. I am so pleased that my parents, Azriel and Adele Genachowski, were able to come from New York, and also my brothers, Joey and Alan. I believe that a couple of cousins are here too, Rabbi Menachem Genak and Alexis Brooks. So thank you all for coming.

Chairman Rockefeller and Ranking Member Hutchison, distinguished Members of the Committee, thank you for the opportunity to appear before you today. I am grateful for this chance. I look forward to answering your questions and seeking your support for my nomination.

Mr. Chairman, over the years, I have had a chance to see your commitment to American consumers, your dedication to protecting the safety of our Nation’s communities. I look forward to working with you on these and other vital issues.

Senator Hutchison, I have great respect for the leadership you bring to the Committee, and I look forward to working with you on the vital issues in the communications area.

I would like to thank Senator Schumer for taking the time to introduce me and for his decision 24 years ago to give a young college graduate his first job.

Thank you for the chance to have me introduce my family.

Mr. Chairman, it is a tremendous honor to have been nominated by President Obama to serve as Chairman of the Federal Communications Commission, and while this hearing is an honor for me,

it is something even more for my family. It is a celebration of the hope and dreams that brought my parents to the United States about 50 years ago.

My parents are immigrants. My father fled the Nazi terror and ultimately came to the United States. My mother joined him, and together they raised a loving family and became role models for their children. My father as a hard-working businessman, my mother as a hard-working homemaker, both completely committed to family and community. From my parents, I learned the meaning of the American Dream.

I learned something else too. My father came to the U.S. to study engineering. I will never forget the day when I was in high school, about as old as my oldest son is now. My dad and I were on a college trip to Boston. I remember him leading me into the dusty stacks of the MIT library and showing me engineering plans he had drafted as a graduate student. They were for a device designed to some day help blind people read words on paper by translating text into physical signals.

The formulas and drawings did not make much sense to me then, and Dad, I confess they still do not. But the core lesson has remained with me: communications technology has the power to transform lives for the better.

We have all seen and lived—and many of the members spoke about it in their opening statements—the implications of the communications revolution. In the 20th Century, we saw a world reshaped by communications technologies and networks: the telephone, radio and television, satellites, computers, and the birth of the Internet.

Now, in the 21st Century, communications has the potential to unleash new waves of innovation, increasing opportunity and prosperity, driving American competitiveness and leadership, connecting our country, strengthening our democracy, and transforming lives for the better.

The Federal Communications Commission has an important role to play in pursuing these goals and, in doing so, on behalf of all Americans.

If confirmed, I look forward to learning from and working closely with the Committee on these essential topics.

In this time of profound economic challenge, our communications sector can make a significant contribution to our Nation's near-term economic recovery and long-term economic success. Congress has entrusted the FCC with the important task of developing a national broadband plan. A world-leading broadband infrastructure in America can be an ongoing engine for innovation and job creation throughout our country, from our rural towns to our inner cities, while helping address vital national challenges such as public safety and education, health care and energy, ultimately helping give all of our country's children the future we dream for them.

As communications devices and networks become ever more essential to the daily lives of every American and as the media landscape changes dramatically, the need has never been greater for an FCC that sees the world from the perspective of consumers and families.

Mr. Chairman, I am honored by the possibility of returning to Government and serving our country. My 2 decades of professional experience have been divided between public service and the private sector. I began as a Congressional staffer in the 1980s. I remember walking these hallways, knocking on doors, and looking for a job.

After law school, I was fortunate to serve as a law clerk in the courts, and I served on the staff of the FCC in the 1990s, at a time when one of the agency's tasks was implementing the historic E-Rate provision, championed by you, Mr. Chairman, and Senator Snowe, connecting classrooms and libraries to the Internet.

I wanted to work in Government because this great country had given so much to my family, and I wanted to give back, and because I believed that Government can be a force for good and can help improve the lives of all Americans. These are still my ideals today.

For the last decade, I have worked in the private sector with large media and technology companies, as well as small businesses and entrepreneurial startups. I saw firsthand how communications technologies and networks can serve as foundations for innovation and for expanding our economy. The experience reinforced my deep respect for private enterprise, the indispensable engine of economic growth.

My time in the private sector also taught me what it means to operate in a dynamic and ever-changing marketplace. I learned the power of pragmatism and the danger of dogma. And if confirmed, I would strive to bring that spirit of common sense to my role in Government.

My career inside and outside Government has convinced me that the FCC can be a model for excellence in Government, fighting for consumers and families, fostering investment and innovation through open, fair, and data-driven processes, a 21st century agency for the information age. The FCC should consult closely with Congress and work effectively and efficiently for the American people. There are so many devoted and talented public servants at the FCC, many of whom I was fortunate to work with earlier in my career at the agency. I hope the Committee will give me the opportunity to work with them again.

Before closing, I would like to salute the work of Acting Chairman Michael Copps and Commissioners Jonathan Adelstein and Robert McDowell. I would like to congratulate Commissioner McDowell on his renomination. I would like to salute the Commission for the hard work they have done in connection with the digital television transition. Our country has benefited greatly from their service.

Thank you again, Mr. Chairman, for the opportunity to appear before you. I look forward to answering your questions.

[The prepared statement and biographical information of Mr. Genachowski follows:]

PREPARED STATEMENT OF JULIUS GENACHOWSKI, NOMINATED TO BE COMMISSIONER  
AND CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Thank you, Chairman Rockefeller, Ranking Member Hutchison, and other distinguished Members of the Committee, for the opportunity to appear before you today.

I am grateful for the chance to learn about areas of interest to you, to answer your questions as best I can, and to seek your support for my nomination.

Mr. Chairman, over the years I have witnessed your commitment to American consumers, and your dedication to protecting the safety of our Nation's communities. I look forward to working with you on these and other vital issues.

Senator Hutchison, I have great respect for the leadership you bring to the Committee, and I look forward to the opportunity to work with you on the important issues in this area.

I'd like to thank Senator Schumer for introducing me today—and for his decision 24 years ago to give a young college graduate his first job. Senator Schumer sets a high bar for public service, and I am honored to call him a mentor and a friend.

Please allow me to introduce the members of my family who are here today. I could not be more grateful for the love and support of my wonderful wife, Rachel Goslins, and my incredible children—Jake, Lilah, and Aaron. I'm so pleased that my parents are here, Adele and Azriel Genachowski, and my two brothers, Joey and Alan Genachowski.

Mr. Chairman, it is a tremendous honor to have been nominated by President Obama to serve as Chairman of the Federal Communications Commission. While this hearing is an honor for me, it is something even more for my family. It is a celebration of the hope and dreams that brought my parents to the United States almost 50 years ago.

My parents are immigrants. My father fled the Nazi terror and ultimately came to the United States. My mother joined him, and together they raised a loving family and became role models for their children—my father as a hard-working businessman, my mother as a hard-working homemaker, both completely committed to family and community. From my parents, I learned the meaning of the American Dream.

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My two decades of professional experience have been divided between public service and the private sector. I began as a Congressional staffer in the 1980s—I remember walking these hallways, knocking on doors, looking for a job. After law school, I was fortunate to serve as a law clerk in the courts. And I served on the staff of the FCC in the 1990s, at a time when one of the agency's tasks was imple-

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Before closing, I would like to salute the work of Acting Chairman Michael Copps, and Commissioners Jonathan Adelstein and Robert McDowell. Our country has benefited greatly from their service.

Thank you again, Mr. Chairman, for the opportunity to appear before you. I look forward to answering your questions.

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#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):

Julius M. Genachowski.  
(Julius Raddatz Genachowski, 1/91–4/97).

2. Position to which nominated: Chairman of the Federal Communications Commission.

3. Date of Nomination: March 23, 2009.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.  
Office Address: 709 G Street, NW, Suite 300, Washington, DC 20001.

5. Date and Place of Birth: August 19, 1962; Brookline, MA.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Rachel Goslins, documentary filmmaker and consultant. Current positions and places of employment: film director at JWM Productions (part-time); consultant to Independent Television Service (ITVS) (part-time) as director of the Independent Digital Distribution Lab, a joint project of ITVS and PBS; head of Triple Leo Productions, a self-owned production company.

Children: Jacob Genachowski, age 17; Lilah Genachowski, age 4; Aaron Genachowski, age 2.

7. List all college and graduate degrees. Provide year and school attended.

Harvard Law School; Juris Doctor; *magna cum laude*, 1991.  
Columbia College; Bachelor of Arts; *magna cum laude*, 1985.

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Job Title(s)	Employer	Dates	Location
Co-Founder and Manager	LaunchBox Digital	2007–Present	Washington, D.C.

Job Title(s)	Employer	Dates	Location
Co-Founder and Managing Director	Rock Creek Ventures	2006–Present	Washington, D.C.
Special Advisor	General Atlantic	2006–Present	Washington, D.C./ New York
Chief of Business Operations and Member of Office of the Chairman	IAC/InterActiveCorp	2003–2005	New York
General Counsel	IAC/InterActiveCorp	2000–2003	New York
General Counsel and Senior Vice President, Business Development	USA Broadcasting (IAC/InterActiveCorp predecessor)	1997–2000	New York
Chief Counsel to the Chairman	Federal Communications Commission	1995–1997	Washington, D.C.
Special Counsel to the General Counsel	Federal Communications Commission	1994–1995	Washington, D.C.
Law Clerk	Justice David H. Souter, U.S. Supreme Court	1993–1994	Washington, D.C.
Law Clerk	Justice William J. Brennan, Jr. (Ret.), U.S. Supreme Court	1992–1993	Washington, D.C.
Law Clerk	Chief Judge Abner J. Mikva, United States Court of Appeals for the D.C. Circuit	1991–1992	Washington, D.C.
Legal Intern	U.S. Department of Justice, United States Attorney's Office, Organized Crime Strike Force	Summer 1989	Boston, MA
Legislative Assistant; Press Secretary	Congressman (now Senator) Charles E. Schumer	1985–1986; 1988	Washington, D.C.
Professional Staff	U.S. House Select Committee on Iran-Contra Affair	1987	Washington, D.C.

I believe each of these jobs represent management-level experience and/or experience that relates to serving as Chairman of the Federal Communications Commission.

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last 5 years.

Advisory Board of the Obama-Biden Transition Project; co-leader of the Transition's Technology, Innovation and Government Reform Working Group.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last 5 years.

Name of Organization	Affiliation
Bandwidth.com	Advisor
Beliefnet	Director and Stockholder Representative
Brennan Center for Justice	Member, Program Advisory Board
CampusU, Inc.	Advisor
Common Sense Media	Director
E2 (Environmental Entrepreneurs)	Advisory Board, Member
Exent	Advisor through Rock Creek Ventures

Name of Organization	Affiliation
Fora.tv	Advisor
General Atlantic	Special Advisor
Gizmoz	Consultant through Rock Creek Ventures
Hillcrest Labs	Advisor
IAC InterActiveCorp (and predecessors)	Chief of Business Operations, General Counsel, Member of Office of the Chairman
JackBe	Director
Jagen	Consultant through Rock Creek Ventures
Jana Partners	Consultant
LaunchBox Digital	Co-Founder and Manager
Mark Ecko Enterprises	Advisory Director and Consultant
New Resource Bank	A Founding Organizer and Advisor
Obama for America	Chairman, Technology, Media and Telecom Policy Advisory Committee; technology adviser to the campaign; member, National Finance Committee
Advisory Board of the Obama-Biden Transition Project	Member
Rapt	Advisor
Rearden Commerce	Advisor
Rock Creek Ventures	Co-Founder and Managing Director
Social Median	Advisor
Styleclick	Director
The Motley Fool	Director
Thummit (and predecessor)	Chairman and Director
Ticketmaster Entertainment, Inc.	Director
Track Entertainment	Advisor through Rock Creek Ventures
Truveo	Advisor
Viewpoints Network	Advisor
Web.com	Director
WebLoyalty	Director

12. Please list each membership you have had during the past 10 years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Name of Organization	Type of Organization	Nature of Relationship	Start Date	End Date
Adas Israel	Religious	Member	1992	Present
Brennan Center for Justice	Non-Profit	Member, Program Advisory Board	2002	Present
Common Sense Media	Non-Profit	Director	2005	Present



Name of Organization	Type of Organization	Nature of Relationship	Start Date	End Date
E2 (Environmental Entrepreneurs)	Non-Profit	Advisory Board, Member	2003	Presently an E2 member; Advisory Board Member in 2006 and 2007
Maret Parents Association	Educational	Class Representative	2005	2006
Obama for America	Political	Chairman, Technology, Media and Telecom Policy Advisory Committee; technology adviser to the campaign; member, National Finance Committee	2007	2008
Advisory Board of the Obama-Biden Transition Project	Political	Member	2008	2009
Society of Sachems, Columbia College	Educational Honor Society	Member	1984	Present
Swiss Benevolent Society of New York	Cultural Society	Member	2004	2005
Swiss Club of Washington, D.C.	Cultural Society	Member	2004	2006

None of these organizations restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Political Candidate/Party/Election Committee	Contribution Amount	Date
Lisa Madigan/Citizens for Lisa Madigan	\$500	6/27/2008
Paul Hodes/Paul Hodes for Congress	\$500	6/14/2008
Paul Hodes/ Paul Hodes for Congress	\$500	3/30/2008
Democratic Senatorial Campaign Committee	\$5,000	12/31/2007
Barack Obama/Obama for America	\$2,300	3/31/2007
Barack Obama/Obama for America	\$2,100	1/18/2007
Deval Patrick for Governor	\$500	11/5/2006
Barack Obama/Obama 2010 Inc.	\$854	7/11/2006
David Yassky/ David Yassky for Congress	\$750	3/15/2006
Democratic Congressional Campaign Committee	\$1,000	2/2/2006
Deval Patrick for Governor	\$500	12/30/2005
David Yassky/David Yassky for Congress	\$500	12/14/2005
Hopefund Inc.	\$1,000	3/14/2005
Anthony D. Weiner	\$2,500	12/3/2004
Anthony D. Weiner/Friends of Weiner	\$1,000	11/24/2004
Anthony D. Weiner/Friends of Weiner	\$750	11/24/2004

Political Candidate/Party/Election Committee	Contribution Amount	Date
America Coming Together	\$2,000	10/14/2004
Anthony D. Weiner	\$540	10/12/2004
Jamie Metz/Friends of Jamie Metz	\$500	7/29/2004
Barack Obama/Obama for Illinois	\$1,000	6/24/2004
John Kerry/Kerry-Edwards 2004 Inc. General Election Legal and Accounting Compliance Fund	\$2,000	5/29/2004
John Kerry/John Kerry for President	\$2,000	3/31/2004
John Kerry/John Kerry for President	\$2,000	3/31/2004
Barack Obama/Obama for Illinois	\$500	2/12/2004
Wesley Clark/Clark for President	\$500	1/22/2004
Wesley Clark/Clark for President	\$1,000	12/24/2003
Barack Obama/Obama for Illinois	\$500	12/23/2003
Barack Obama/Obama for Illinois	\$2,000	9/30/2003
LA PAC	\$1,000	8/24/2000
Anthony D. Weiner/Friends of Anthony D. Weiner	\$500	6/30/2000
Anthony D. Weiner/Friends of Anthony D. Weiner	\$500	6/30/2000
Anthony D. Weiner/Friends of Anthony D. Weiner	\$500	12/8/1999
Barry Dwayne Ford/Friends of Barry Ford	\$500	12/1/1999
Al Gore/Gore 2000	\$1,000	4/27/1999
Charles Schumer	\$500	9/14/1998

During the recent Presidential campaign, I served in voluntary capacities on the Obama Presidential Campaign: as a member of the National Finance Committee; Chairman of the Technology, Media and Telecom Policy Advisory Committee; and as a technology advisor to the campaign. I also provided volunteer assistance to the following campaigns: Barack Obama (Senate 2004); Anthony Weiner (various races for Congress and New York City Mayor (2005)); David Yassky (Congress 2006); Kerry-Edwards 2004; Charles Schumer (Senate 1998).

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Harvard Law School, graduated with honors—*magna cum laude*.

Columbia College, graduated with honors—*magna cum laude*.

Member of honorary society, Senior Society of Schems at Columbia College.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Written Work	Date	Location
Article on Why Venture Capitalists Should Support Barack Obama, co-authored with Mark Gorenberg	October 21, 2008	Venture Capital Journal (Also published on the Internet, at <a href="http://www.pehub.com">www.pehub.com</a> )
Blog post on Startup Lessons From the Campaign Trail	February 4, 2008	LaunchBox Blog
Blog post on the Obama Tech and Innovation Plan	December 8, 2008	<a href="http://my.barackobama.com">my.barackobama.com</a>

Written Work	Date	Location
Case note on <i>Doe v. University of Michigan</i>	April 1990	Harvard Law Review
Op Ed on The Credit Card Puzzle: Why the Rates Never Fall, co-authored with Representative (now Senator) Charles Schumer	January 12, 1986	<i>Washington Post</i>
<i>Speech or Panel</i>		
Government 2.0, Technology Roundtable	August 26, 2008	2008 Rocky Mountain Roundtable (Denver, CO)
Challenge Day Panel	June 16–18, 2008	Supernova 2008, in partnership with Wharton Business School, University of Pennsylvania (San Francisco, CA)
Panel: POTUS 2.0	January 30, 2008	State of the Net Conference (Hyatt Regency, Washington, D.C.)
Panel: Media and Values	August 13–15, 2007	FOCAS, Aspen Institute (Aspen, Colorado)
Panel: Rewiring Politics	June 20, 2007	Supernova 2007, in partnership with Wharton Business School, University of Pennsylvania (San Francisco, CA)
Panel: User Created Content	November 28, 2006	Video on the Net (Von) Conference (Boston, MA)
Panel: The Past and Future of Electronic Commerce	March 20, 2006	The George Washington University (Funger Hall, 22nd and G Streets, NW, Washington, DC)
Panel: Where We Are and Where We're Going	February 2, 2006	7th Annual Early Stage Capital Forum
Panel: Distributed Business	June 22, 2005	Supernova 2006, in partnership with Wharton Business School, University of Pennsylvania (San Francisco, CA)
Panel on Telecom Policy	July 8, 1997	National Council of La Raza, Telecom Policy Roundtable (1111 19th St., NW)
Panel at a conference on The Jurisprudence of Ratings	March 25, 1996	Cardozo School of Law (New York, NY)
Panel at a conference on Communications	February 1996	London, England

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

On July 11, 2007, I testified at a hearing of the Committee on Small Business of the U.S. House of Representatives. The hearing was on: "Small Businesses at the Forefront of the Green Revolution: What More Needs to be Done to Keep Them Here?" I testified as a member of the founding group of New Resource Bank, which specializes in serving the needs of green entrepreneurs and sustainable businesses.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have worked for two decades in the fields of communications, technology, media, and law—nine years in public service, and eleven years in the private sector—and I believe I have strong qualifications to serve as Chairman of the Federal Communications Commission.

I am fortunate to have direct experience in senior positions at the FCC. I served at the FCC from 1994 to 1997, working for over 2 years as Chief Counsel to the Chairman, after starting at the FCC as Special Counsel to the General Counsel.

My experience in the public sector also includes time in other parts of government. I clerked for 2 years at the Supreme Court—for Justice David L. Souter, and

for Justice William J. Brennan, Jr. (ret.) and for 1 year on the U.S. Court of Appeals for the D.C. Circuit, for Chief Judge Abner Mikva. Earlier, I worked for 3 years in the U.S. Congress. I served as an aide to then-Representative (now Senator) Charles E. Schumer and on the staff of the House Select Committee on the Iran-Contra Affair. In 1997, I was listed in *American Lawyer* as one of the “Public Sector 45”—“45 pioneering lawyers under the age of 45.”

My private-sector experience in communications includes serving from 1997–2005 in senior management at IAC/InterActiveCorp, a global Fortune 500 Internet and media company, with thousands of employees and billions of dollars of revenue. I began my work at IAC (when it was called USA Networks, Inc.) as General Counsel and Senior Vice President, Business Development of USA Broadcasting, a broadcast television operating business of the company. My subsequent positions at IAC included Chief of Business Operations, General Counsel, and a member of the Office of the Chairman. Most recently, I am Co-Founder and Managing Director of LaunchBox Digital and Rock Creek Ventures. These entities have launched, advised, and invested in technology and other early-stage companies, providing me important direct experience with entrepreneurs and innovators creating new businesses. I also serve as a Special Advisor at General Atlantic, a growth equity firm. In 2005, I was listed in *Business Week* as one of “25 Managers to Watch” in the media industry.

I have also been active at the intersection of social responsibility and the marketplace. For example, I am part of the founding group of New Resource Bank, a commercial bank that specializes in serving the needs of green entrepreneurs and sustainable businesses.

I have been an active member of non-profit organizations. I have served as a director of Common Sense Media, a non-partisan, non-profit organization which is dedicated to improving the media and entertainment lives of children and families. I have also served on the advisory board of E2 (Environmental Entrepreneurs), a national group of business leaders who advocate for good environmental policy while building economic prosperity.

I would like to be Chairman of the FCC because I have seen over the course of my own life the power of technology and communications to improve the lives of Americans. I was fortunate to learn from my parents not only the importance of this country’s promise of opportunity, but also the role that technology can play in extending the American Dream. My parents are immigrants; my father came to the United States to study engineering at the Rensselaer Polytechnic Institute and the Massachusetts Institute of Technology. My parents benefited from the opportunities this country offers and inspired in me a desire to help ensure that all Americans can enjoy the benefits that communications and technology can bring.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The FCC must have appropriate and professional management and accounting controls in place to ensure that the agency and its employees are discharging their duties effectively; it must have all appropriate accounting and procedural safeguards in place to avoid waste, fraud and abuse. It is essential that the FCC Chairman ensure that the agency’s Managing Director and Inspector General—as well as all of the agency’s Bureaus and Offices—protect the integrity of the agency’s programs and preserve the public’s trust. If confirmed, my overarching management objective for the agency will be to make it a model for excellence in government, and I am confident my experience can help the agency achieve this goal.

As noted in response to question 18, my prior experience includes serving in a senior role at the FCC—as Chief Counsel to the FCC Chairman—which I believe would be of great value in successfully managing the FCC as Chairman. In addition, I have held senior management roles in the private sector at a large company. From 1997–2005, I served in senior management roles at IAC/InterActiveCorp, a global Fortune 500 company with thousands of employees and billions of dollars of revenue, where my positions included Chief of Business Operations and General Counsel. In 2005 I was recognized by a national business publication as one of 25 leading managers in the media business. Finally, through my various other private-sector roles, I have extensive experience with companies of all sizes.

20. What do you believe to be the top three challenges facing the department/agency, and why?

First, the FCC faces an immediate and pressing challenge relating to America’s transition from analog to digital broadcast television. The FCC must do everything it can to minimize consumer dislocation and confusion, and to help American viewers of over-the-air television navigate the complex and challenging transformation of this important medium.

Second, the FCC has the vital challenge of ensuring that the United States has world-leading 21st century communications networks that are accessible to all Americans. Congress recently tasked the FCC with developing a national broadband plan, and if confirmed, I look forward to implementing that Congressional provision. I believe our communications networks are our national platform for innovation, opportunity and prosperity. They are essential to American competitiveness, and the sector can play an important role in economic recovery and job creation. An integral part of this challenge is to ensure that all Americans have access to broadband networks, whether they live in rural areas or cities, whether they are school children or adults operating a small business. These are examples; there are countless ways in which universally accessible broadband can benefit all Americans. Another important challenge is to ensure that protecting the interests of consumers is a key component of the FCC's work. Communications services are increasingly important in the daily lives of Americans, and their cost and complexity are increasing as well. The Commission must ensure that consumers of these services are properly protected in the marketplace. A final critical challenge is ensuring that our Nation's communications networks are up to the task of preserving and advancing public safety. We need to make sure that America's first responders have the tools they need to do their jobs safely and effectively.

Third, I believe the FCC has the challenge of becoming a model for excellence in government. This task is critical to the FCC meeting its mission and priorities. The agency must be fair and fact-based in its work, and must become more transparent and collaborative than ever before. It is essential that the agency have an excellent working relationship with Congress, and if confirmed, I look forward to working with Congress on establishing priorities and addressing the many issues in the FCC's jurisdiction. In addition, the FCC should be a leader in using technology to help make government more responsive to consumers and to all parties affected by FCC actions.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

See part II of Schedule C of SF-278.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Communication Commission's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Communication Commission's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official.

5. Describe any activity during the past 10 years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

While I was serving as General Counsel of IAC/InterActiveCorp, an Internet and media company, and its subsidiary USA Broadcasting, I participated as part of my responsibilities in public policy matters that affected the company. This included participation on behalf of the company, before it sold its TV stations in 2001, in Federal Communications Commission proceedings relating to television broadcasting, including the purchase, sale, and ownership of broadcast television stations, and digital television. In addition to owning broadcast television stations until 2001, IAC/InterActiveCorp (and its predecessor companies, known as USA Interactive, Inc., and, before that, USA Networks, Inc.) owned cable networks including USA

Network, Sci Fi Channel, Trio, and HSN, and a television production studio, until 2002, after which most of IAC's operating businesses were predominantly Internet businesses.

I serve on the Board of Directors of Common Sense Media, a non-partisan, not-for-profit organization, dedicated to improving the media and entertainment lives of children and families. As a co-founder of New Resource Bank, which specializes in serving the needs of green entrepreneurs and sustainable businesses, I testified before the House Committee on Small Business on ways to help small "green businesses." (See also response to A(17)). In addition, along with other business professionals who are members of the non-profit Environmental Entrepreneurs (E2), I have met with Members of Congress to advocate for good environmental policy while building the Nation's economic prosperity.

Finally, I served as a member of the Advisory Board of the Obama-Biden Transition Project, and as co-leader of the Transition's Technology, Innovation and Government Reform Working Group. I also served as Chairman of the Technology, Media and Telecommunications Policy Advisory Committee of the Obama Presidential Campaign, as a technology advisor to the campaign, and as a member of the campaign's National Finance Committee.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Communication Commission's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FCC's designated agency ethics official.

#### C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain.

I have never been disciplined or cited for a breach of ethics by any court, administrative agency, professional association, disciplinary committee or other professional group. For litigation, please see response to C(3) below.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

As part of my duties as an officer and a member of the senior management of IAC/InterActiveCorp, a public company, and its subsidiary USA Broadcasting (subsidiary sold in 2001), I participated on behalf of the company in administrative proceedings in the ordinary course of business, including at the Federal Communications Commission principally relating to television broadcasting. In my role as General Counsel and an officer of IAC, I was also involved in civil litigation in the ordinary course of business. While I was an officer of IAC and a director of public IAC subsidiaries, several shareholder class action lawsuits were filed against a broad group of officers and directors of those companies and I was included as a party in the lawsuits. None of these lawsuits resulted in any finding of liability against any party, and each has been dismissed or inactive for some time. Two class-action lawsuits have been filed against Ticketmaster and all of its directors challenging the proposed transaction involving Ticketmaster and Live Nation principally on the grounds that the proposed transaction provides insufficient value to Ticketmaster shareholders, and I was included in the lawsuit as a director. I have had no involvement in the transaction—after learning that a transaction might be proposed, I recused myself from the matter. I no longer serve on the Ticketmaster board.

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

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

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

## D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

## RESUME OF JULIUS GENACHOWSKI

**Education**

Harvard Law School, J.D., 1991, *magna cum laude*; Co-Notes Editor, Harvard Law Review.

Columbia College, B.A., 1985, *magna cum laude* in history.

**Work Experience—Private Sector**

*LaunchBox Digital and Rock Creek Ventures Co-Founder*, since 2006.

Co-founder of LaunchBox Digital (2007).

Co-founder and Managing Director of Rock Creek Ventures (2006).

Advising, launching and accelerating technology and other early stage companies.

*General Atlantic, Special Advisor*, since 2006.

Global growth equity firm.

*IAC/InterActiveCorp, Chief of Business Operations, General Counsel, Member of Office of the Chairman*, 1997–2005.

Held senior positions at this public, global Fortune 500 Internet, media and technology company.

Started at company as General Counsel and Senior Vice President, Business Development, of USA Broadcasting.

*Other Affiliations:*

*New Resource Bank*. Part of founding group of New Resource Bank, which opened in 2006 and specializes in serving the needs of “green” entrepreneurs and sustainable businesses.

Testified at Congressional hearing on helping small “green” business.

*Member Boards of Directors and Advisors* of various companies.

**Work Experience—Public Sector**

*Federal Communications Commission*, 1994–1997.

Chief Counsel to Chairman Reed Hundt.

Special Counsel to General Counsel (later Chairman) William Kennard.

*U.S. Supreme Court*, and *U.S. Court of Appeals for the D.C. Circuit*, 1991–1994.

Law Clerk to Hon. David H. Souter, U.S. Supreme Court.

Law Clerk to Hon. William J. Brennan, Jr. (ret.), U.S. Supreme Court.

Law Clerk to Hon. Abner J. Mikva, Chief Judge, U.S. Court of Appeals for the D.C. Circuit.

*Congress*, 1985–1988.

Hon. Charles E. Schumer, U.S. House of Representatives (now Senator), Legislative Assistant; Press Secretary.

Select Committee on the Iran-Contra Affair, U.S. House of Representatives, Professional Staff.

**Non-profits**

*Environmental Entrepreneurs (E2)*. Has served on Board of Advisors.

*Common Sense Media*. Member of Board of Directors.

**Other**

Listed in *Business Week* as one of 25 “Managers to Watch” in the Media industry, 2005.

Listed in *American Lawyer* as one of the “Public Sector 45”—“45 pioneering lawyers under the age of 45,” 1997.

Born August 19, 1962; married to Rachel Goslins. Children: Jake (1991), Lilah (2004), Aaron (2006).

The CHAIRMAN. Thank you very much, Mr. Genachowski.

I was Governor, if you remember, back in 1981, and I appointed the first person to head the Consumer Advocate Division of the West Virginia Public Service Commission. I did not know what that was going to turn out to be. The person is still a force and he has literally changed the face of West Virginia, a single person, on a sometimes weak, sometimes strong, Commission.

In comparison, critics have argued that the FCC has become captured by industry—not everybody says that, but critics do say that—and more of a referee of corporate disputes than of what can help the consumer, as caretaker of the public.

By statute, however, the purpose of the Commission is to make available, as much as possible, to all the people of the United States of America, efficient communications services with adequate facilities at reasonable prices.

So question. I believe that the FCC should work to make sure consumers are offered the best quality service at reasonable prices. I assume you agree.

Mr. GENACHOWSKI. Yes.

The CHAIRMAN. Do you believe that the FCC has adequately fulfilled its mission in making sure that consumers have access to the latest technology at reasonable rates? If not, is the agency structurally capable of so doing?

Mr. GENACHOWSKI. Senator, let me speak briefly about consumers and about broadband. In this time of great change in our communications area, it has never been more important for the FCC to wake up every day and understand that the core of its mission is working on behalf of American consumers.

The communications sector, as Senator Kerry mentioned, is a fifth of our economy. It has contributed a greater percentage to our economic growth. There are enormous opportunities for all Americans, but there is also confusion among consumers, which the FCC can help tackle. The FCC should be looking at maximizing choice for consumers to deal with complaints, and waking up every day and looking at the world from the perspective of American consumers.

With respect to your other point, Chairman Rockefeller, the growing consensus that we need a national broadband strategy in this country. In fact, the requirement that the FCC develop and issue a national broadband plan is a recognition that we, as a country, are not where we need to be with respect to our communications infrastructure. We should have, I believe, a communications infrastructure that is world-leading, a 21st Century infrastructure that generates economic growth, opportunity and prosperity. And critically, we should have in this country a 21st Century communications infrastructure that extends to all Americans and that does so, to your point, meaningfully, in a way that they can afford



to sign up and use to take advantage of the opportunities that communications technology offers.

The CHAIRMAN. Thank you.

The FCC has been criticized for a lack of transparency by the GAO. I will not go into the language, but the language is quite startling. Consumer groups join them. Even industry joins them. Some industry. It is nearly impossible to find information on the FCC's website—that point has been brought up this morning—and much of the data filed with the Commission is not even accessible online.

Worse, in the past, the FCC has been accused of disclosing information to some—and you know that to be the truth—while leaving the general public in the dark. Consumers should not have to hire \$500-per-hour lawyers to find out what the FCC is doing and participate in the decisionmaking process.

Question: Do you agree that the FCC should be more open to the public?

Mr. GENACHOWSKI. Yes.

The CHAIRMAN. And how?

Mr. GENACHOWSKI. Well, Senator, the first thing, it requires a commitment throughout the agency to principles of openness, transparency, fairness, fact-based decision-making, and if confirmed, I would want to lead the FCC in that direction. I do not see how it could be otherwise. The issues are just too complex. We need an FCC that is smart about technology, smart about the law, smart about economics, smart about businesses, and smart about what consumers go through every day in navigating a complex communications world. So I think this is quite important.

I had the same experience that you did in trying to navigate the FCC website. The FCC should be a model for transparency, openness, and fairness. There is a lot of work to do, but I would like to see the FCC be a model with respect to using communications technologies to communicate openly with the American people and with all the constituencies that are interested in what the Commission does.

The CHAIRMAN. I am over my time, but I will just end by saying this.

You have plans to make it more transparent. Some of the things that the GAO has said are quite staggering. They are talking about how the FCC should ensure equal access to rulemaking information. That is the title of a booklet which criticized the agency for providing more information to certain stakeholders to the detriment of others. According to the GAO, in some instances, the FCC staff would go so far as to call individuals to inform them of the upcoming items scheduled for a vote. In contrast, stakeholders representing consumers and public interest groups do not hear from them.

I hope you are not satisfied with that.

Mr. GENACHOWSKI. No.

The CHAIRMAN. I call on the Ranking Member.

Senator HUTCHISON. Thank you, Mr. Chairman.

On the broadband issue, how do you view the issue of no service versus underserved areas as priorities?

Mr. GENACHOWSKI. Senator, the first thing I would say is that in working on the national broadband plan that Congress entrusted to the FCC, I would start where Congress started. Congress and the staff should ask the FCC to look at deployment, affordability, national purposes, and the FCC, I expect, would do that.

With respect to unserved and underserved areas, I think the first principle the agency should follow, with respect to its own work and also to the extent that it consults with the NTIA and other agencies on grants, is that the taxpayers should get the biggest bang for their buck for taxpayer dollars. The first priority, I think, is to do what can be done to extend broadband to unserved areas, rural areas around the country. There is a divide between parts of the country that have broadband, in some cases have fast broadband, and people that do not have broadband at all. And I think Congress was clear that working on providing broadband to unserved areas is critical.

There are other concerns and goals as well. I think the term “underserved” can mean a series of different things. In some cases, it can mean unserved in a particular area. So there may be a market that is served, but a pocket of it that does not receive any service, and there may be ways to help operators extend their service to parts of the market that do not receive it. There may be markets that are underserved because the speed is too slow, and there may be ways to help providers in the market to increase their speed. There may be markets that are underserved because the adoption is very low, and there may be ways, Senator Warner’s point, to think about strategies to increase adoption in that area to make it a sustainable economic possibility of ongoing broadband service in that area.

Senator HUTCHISON. Well, that is correct. I just hope that the priority is to help people who have nothing with our stimulus money is really what we are discussing here. But people who have nothing, it seems to me, should take priority over people who have slower service. I would hope that that would be a common-sense rule.

The indecency policies going forward. How do you see that evolving and is it a priority that indecency enforcement policies would be looked at?

Mr. GENACHOWSKI. Senator, I heard you mention your children, and I have children as well. I am a parent who shares the concerns of many parents about what their kids see on TV. I worked on children’s educational programming when I was at the FCC, and I chose, after I left the FCC, to get involved with a nonprofit called Common Sense Media that focuses on helping improve media for family and children. I share the concerns of parents on indecency, number one.

Number two, the FCC’s job in this area is to enforce the law, and Congress has been clear on the indecency law. The Supreme Court recently rejected a challenge to the indecency law. The FCC’s job is to enforce the law and it will enforce the law around indecency.

Senator HUTCHISON. Let me ask you on media ownership. When I first came to the Senate, I was a person who believed that a newspaper should not have too much television presence in a market because I think more media outlets are a good thing. Since I

came to the Senate, the technology world has exploded, and I no longer think that we need to police that. And now we have the most incredible situation, which I do not think any of us ever anticipated in our lifetimes, that major newspapers would be on the brink of literally going out of business, and not having that avenue for news coverage for the citizens of big communities is now a viable possibility.

So my question is the FCC does still have rules against dual ownership, and I think it is important that you look at that and determine if really we ought to be doing everything we can to keep newspapers alive in order to have the most outlets for people who like to get their news in different ways.

Mr. GENACHOWSKI. Senator, very early in my career I worked on a newspaper in college and then I reestablished the oldest newspaper at the college that I went to. My heart is filled with respect for the role that newspapers play in our society and our democracy.

And a little bit later in my career, I spent time in the broadcasting industry where I learned both that it is a special business, plays a special role in our country, and also that it is a hard business, especially in these times.

It is a unique business. It is still broadcasting that is our only universal medium and source for news and information. So excessive consolidation is something, I think, that still needs to be paid attention to, but at the same time, it would not be right for the FCC to ignore the changes in the marketplace that are apparent and the struggles in the various parts of the traditional media business.

Congress has required the FCC on, I believe it is a quadrennial basis to look at its ownership rules, and I think when Congress asked the FCC to look at its ownership rules, it expects it to run an open process, looking at facts, looking at data, understanding the marketplace, understanding the principles that underlie the concerns on all sides in this to understand the importance of having broadcast outlets, and of course, the importance of having newspapers, understanding concerns about excessive consolidation and run an open and fair process to make smart policy judgments about the right thing to do.

Senator HUTCHISON. Do you know when that quadrennial review is up?

Mr. GENACHOWSKI. I believe the next review is scheduled for 2010, and I apologize if that is the wrong date.

Senator HUTCHISON. I did not know either. But I would hope you would set it at a higher priority than just waiting for a review period to come up. I think that we have got to do something to help newspapers in my opinion.

Mr. GENACHOWSKI. Yes. And, Senator, I agree with that.

The other thing that I would point out is the FCC has had rules in place for some time with respect to failing stations, distressed stations, and certainly any station in that situation that comes to the Commission should be taken seriously and looked at seriously because it would be wrong for the agency to ignore the real problems that exist in the marketplace.

The CHAIRMAN. Thank you, Senator Hutchison.  
Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

If I may, Mr. Genachowski, I would like to just pick up where Senator Hutchison left off. She was talking about newspaper ownership of broadcast media. I would like to ask you about the minority ownership of broadcast media. You can look back. We have made some progress in that area. But I would like to ask you: Do you think it is a good public policy to encourage more minority ownership of broadcast media?

Mr. GENACHOWSKI. My understanding, Senator, is that it is the policy of the Communications Act, to ensure the widest possible dissemination of licenses and to pursue diversity in ownership. It has been a value that has been widely shared for a long time, and the data that I have seen does not leave one with a good taste about where we stand now, as a country, on that.

Senator PRYOR. Do you have any ideas on what we can do, meaning the FCC or the Congress or whoever, to try to make ownership of broadcast outlets more possible for minority interests?

Mr. GENACHOWSKI. I think the first possibility is to make sure that we understand what is actually going on out there. I have been told that the data with respect to ownership now is not satisfactory and there is work that can be done to understand that.

Second, I think this is an area that lends itself to the FCC running a process that is open and that is creative and that looks for ways that are constitutionally permissible and that would actually work but that lead to a wide dissemination of licenses and diversity in ownership.

Senator PRYOR. I just think that the public policy goal of a more diverse ownership spectrum is a good national goal that we should continue to try to do. I would be glad to work with you on how to get there.

The second question is about broadband going out to rural areas. This morning, this Committee had a hearing on Inez Tenenbaum over at the Consumer Product Safety Commission in her confirmation process. She had some really good ideas about how the CPSC can better communicate dangers and recalls and safety and all this stuff to the general public. But one thing that struck me is most of her ideas—not all, most of them—dealt with people having broadband capability so they could receive this type of information from the CPSC.

I would like to ask you about the BTOP, the Broadband Technology Opportunity Program, in the stimulus package. Do you know much about that, and do you have a sense of how that is going to be administered?

Mr. GENACHOWSKI. My understanding is that it is the Commerce Department and the Agriculture Department that have the grant-making authority. The FCC, as I understand it, has responsibilities to consult with those agencies as they put together the plans for distributing the grants.

Senator PRYOR. And I know you are not there yet, but is your understanding that the FCC is involved in that process?

Mr. GENACHOWSKI. My understanding is that there has been consultation, yes.

Senator PRYOR. Are you happy with what you hear on that, or do you think the FCC should be more involved? And do you think

that program is going to actually get to unserved areas, as Senator Hutchison was referring to?

Mr. GENACHOWSKI. Senator, I do not have any access to non-public information. From what I have heard publicly, I believe that active, healthy consultation processes are going forward. I think these kinds of activities are ways to demonstrate how Government can work together collaboratively to pursue a common end. The FCC is the expert agency on communications and our communications infrastructure. It is more than appropriate that the FCC play a consultative role and is certainly something that I would want to jump into, if confirmed, and work with you to understand ideas that you might have on the grant program.

Senator PRYOR. Last, I would like to ask you about something that is important to you as a parent and me as a parent and others in this room as parents and grandparents. We passed the Child Safe Viewing Act. I do not know if you know the history of that. Are you familiar with that?

Mr. GENACHOWSKI. I have some familiarity, but please—

Senator PRYOR. Basically when the V-chip bill passed way back when in, I think, 1996, if I am not mistaken, there was a requirement that the FCC would continue to look at technology and see if this idea could be improved upon. This Act that we passed recently in the last year or 2 basically mandated that the FCC open a case on it. I want to thank Acting Chair Copps because he has done that. I understand you are in a comment period right now, maybe even a second round of a comment period.

My question for you is, given your background and all the things that you have done, do you think it is time that we revisit V-chip and not just the technology but the V-chip system that is in place?

Mr. GENACHOWSKI. Senator, first of all, I admire your leadership in this area. It is very important and it is something that I have been concerned about for some time. You mentioned grandparents, and imagining my grandparents and my kids watching TV together sometimes is a challenging thing to think about.

I believe in the power of technology to help drive solutions here. I think this is a set of issues that should not be ideological. This is about making sure that parents are empowered to make decisions about what their children see. I have great hope for what technology can do to help parents here.

Exactly what the ideas are, I think, should come out of a healthy process at the FCC. I know that process has begun. I hope it is generating great creative ideas. I would like to see innovation in this area and think about what kinds of incentives can we provide so that we get as much innovation here with respect to technologies to help parents as we do in other areas.

Senator PRYOR. Mr. Chairman, thank you.

The CHAIRMAN. Thank you very much.

Senator Begich?

Senator BEGICH. Thank you very much, Mr. Chairman.

As Senator Pryor just talked about, I also will be very interested in how you proceed and for the same reasons, as someone who has a young child. Someone asked me which shows have I watched recently. He is a little under 7, and they sort of described a sitcom. I said, I have no clue what they were talking about. If it was not

on—I will not publicize one channel, but I will say PBS was the other channel. If it is not on those two, I have no clue what is on the regular shows, unless it is a newscast. I am very interested in it as you proceed as the chair of the FCC.

Let me, if I can—and you and I talked briefly about this in the Universal Service Fund and how important that is at least for our State, a very rural State and, I like to describe here in this committee, “extreme rural,” as other people talk about rural States. The distance, and the travel, and the complexity of transportation to these locations, but also the climate conditions, really create some unique situations.

I know there is talk about reform. As that moves forward, there will be issues of concern for us as Alaska is identified, if I am not mistaken—it is 100 percent tribal, which gives it some special considerations. I am curious on how you feel about that policy and how tribal land is recognized and how Alaska fits into that. You can give a general. You don’t have to be specific, but specifically about that and the reform itself of the USF.

Mr. GENACHOWSKI. Sure. Senator, the principle of universal service is a core principle of communications policy, as you know, that goes back to the beginnings of the Communications Act, that has been reinforced many times by Congress, and that is a priority of mine. I would like to see us have as much success in universal service and communications over the next 75 years that we have had over the last 75 years, extending communications infrastructure and the benefits of communications to all Americans.

I defer to your knowledge of Alaska, of course, but I think historically there has been success in universal service in the Alaska. I would like to see that continue in the future with respect to all of the vast country that we have.

Senator BEGICH. And I appreciate that because you are right. It has been very successful, very useful. And also in Alaska, because our lands are different with the Alaska Native people, there are tribal lands and corporate tribal lands. It is different than reservation lands. So sometimes, we have to continue to point that out because our land claim settlement was much different than the traditional reservation settlements.

So as you have an opportunity—I know I said in my statement—I did not give you a chance. You kind of nodded yes. I know you said yes in my meeting, but I am looking forward to you to come to Alaska. And I just want to echo that because this will give you a chance to see the value of that program.

Mr. GENACHOWSKI. Good. I would like that.

Senator BEGICH. Let me also point out in Alaska the issue of how we provide broadband. We have some concerns from satellite providers. Currently, they are concerned that they will be excluded from the national broadband plan. In Alaska, because the cost and utilization of satellite is part of the equation, how do you see that, and will you in the broadband plan keep that all in consideration that in Alaska satellites are utilized in a lot of ways to get that more costly connection that may not be able to be done by land?

Mr. GENACHOWSKI. Senator, that is not an issue that I am very familiar with. I am glad you have raised it and I would like to make sure that I have a chance to work with you on it and make

sure that it gets the attention that it deserves in the FCC's workings on the national broadband plan.

Senator BEGICH. Excellent, because I can tell you they are very concerned, just because, again, the vast distances, the uniqueness of the lack of access to infrastructure, satellites become part of the equation of how we deliver broadband. The good news is, in Alaska, 70-plus percent—we are the highest connected State in the country, which is kind of unusual in its own way and it is because of this kind of relationship we have with satellite, as well as on the ground.

I know you are a big supporter of E-Rate. Again, for us it is more of a statement just for the record, as our discussion occurred privately, and that is the importance of E-Rate and how we deliver. When we have the No Child Left Behind Act that says you must have a certain type of teacher with certain credentials teaching kids at certain levels, in some schools, we may only have 10–15 people and to have all that specialty is impossible. So E-Rate and our education capacity of telecommunications is powerful. We can go from one hub and teach in 30 different villages at the same time. I just want to reemphasize the importance of that but also hear your support again on the record of how important E-Rate is, as well as the impact it may have especially in rural communities.

Mr. GENACHOWSKI. Yes. I was privileged to see the early days of E-Rate. Chairman Rockefeller and Senator Snowe and others on this Committee worked very hard for it. It is a great accomplishment.

Thinking about broadband going forward and the opportunities that it creates for all Americans, education is a great example, a way to give children everywhere access to the best information, the best teachers, and to allow children in rural areas to have the same opportunities as children who live close to universities. I am very excited about the opportunities for education and broadband and for the next generation of E-Rate.

Senator BEGICH. Very good.

My time has expired, but let me again thank you. I think you are going to be an incredible Chair.

To Mr. McDowell, I apologize. I will not be here also. But again, Mr. McDowell, your reappointment is going to be a plus. I know you have been a big proponent in a lot of ways of Alaska issues because you have seen it. You have been there. So we will work on the Chairman together and give him that great experience of Alaska. Not the fish, the telecommunications.

But again, thank you both, and I look forward to working with you on Alaska specifically.

Mr. GENACHOWSKI. Thank you.

The CHAIRMAN. Thanks, Senator Begich.

Before I call on Senator Cantwell and Senator Klobuchar, I have to make a committee announcement. I am not pleased by the way—and this was my fault, so I take full responsibility for it—that people made their statements then left. Some happily came back and for that, I applaud them. But it is wrong. I mean, this is a mammothly important hearing—a mammothly important hearing—for a nomination and a vote to follow. We cannot have it that people come in and make their opening statements, get into their

opening statements the questions that they are going to ask anyway, and then having done so, leave. This is an embarrassment to you. It is an embarrassment to me. It is an embarrassment to the U.S. Senate and to this Committee.

So from now on, there may be very rare occasions, but we will not have opening statements except for the Chairman and the Ranking Member. Then we will go directly to the witness, and that will be the order.

I now call on Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Mr. Chairman, will that be the Genachowski rule?

[Laughter.]

Senator CANTWELL. I thank the Chairman, and I agree. I am here to ask questions in person, and I think it is an important hearing. So thank you for your statement.

Mr. Genachowski, the diversity of media. I do not know if any of my colleagues have asked about that so far. But I have supported technical changes required to expand the number of low-powered FM stations. These are important because they develop local content and they are important to the community interests.

I certainly opposed media consolidation, particularly with cross ownership, and I do not think it is really the way that we are going to save newspapers. I do not think that is the issue.

I think that there is an important role, though, for police, education, and government, the PEG channels, and their service, and PEG channels to provide an outlet for people in the community to create and distribute their own television programming. But I am concerned if the—I know you are working on a rulemaking, but if the translators get priority and fill all the available frequencies, even if Congress were to allow low-powered FM stations to operate in the third adjacent channel, it would not be meaningful. So I would like to understand what you think we can do to make sure that we are keeping that diversity of voices and having low-powered stations.

Mr. GENACHOWSKI. Senator, yes. We spoke about this a little bit before. The wide dissemination of spectrum licenses and diversity of ownership is, I think, in the Communications Act. It is an important principle and priority, and it is something that I look forward to working on.

The issues that you mentioned, I think, are examples. There are creative ways to tackle these issues that constantly need to be looked for. I think your leadership on the LPFM issue is an example of that. I am not an expert in that. I look forward to learning more about that. But making sure that, in connection overall with understanding uses of our spectrum, looking for ways to put more spectrum to work, thinking about a wide dissemination of licenses in connection with that, all seem to me to be high priorities and something that I would look forward to working with you and the Committee on.

Senator CANTWELL. Another area is white spaces, opening up broadcast white spaces to fixed wireless and personal portable de-



vices. I know the Commission took a very conservative start in opening up the white space, but it was a start.

Will the Office of Engineering Technology make sure that this is a priority issue so that we can have sufficient resources in working with the industry to test and make sure that we are answering any of the technical issues that might come up?

Mr. GENACHOWSKI. Senator, I think the answer is yes. In fact, I am glad that you are mentioning another example of creative use of spectrum to advance the overall goals of the Communications Act.

I am energized by what has been happening in the country around mobile. We are seeing incredible innovation. The number of Americans who have mobile phones has increased dramatically. I think the current number is about 270 million Americans, but even more important, the number of Americans who have smart phones, who have mobile phones with advanced applications on them, is increasing.

I believe that we have an opportunity for the U.S. to lead the world in mobile. Some of that will require the ongoing creativity and the ideas of the sorts that you mentioned to take full advantage in this country of the opportunity that spectrum use allows.

Senator CANTWELL. And a question about, obviously, competitive markets for broadband service. If there is a competitive market for broadband service where consumers could purchase broadband from multiple independent providers, would the discussion over the net neutrality change?

Mr. GENACHOWSKI. Well, I think that in a market of unlimited competition, it might change. The goal, as I see it, of the net neutrality debate is to preserve the Internet as the greatest platform for innovation and small business creation that we have ever had. More competition, more consumer choice would, of course, help achieve that, and that would be an excellent thing.

Senator CANTWELL. I mean, the concern, obviously, is not to artificially segment off parts of the population and giving them a higher cost.

So you see more competition in broadband services.

Mr. GENACHOWSKI. Competition is clearly a goal for the FCC, in the Communications Act, and something that I would hope to pursue and promote at the FCC.

Senator CANTWELL. Thank you, Mr. Chairman.

Senator PRYOR [presiding]. Thank you.

Are there any other questions? Senator Hutchison?

Senator HUTCHISON. I do. I wanted to ask one last question. We talked in my office about the so-called Fairness Doctrine, and as I understood it, you said that you do not support reviving it or policies like it directly or indirectly through localism and that sort of thing. I just wanted to have for the record that I am correct in stating your position, or if you would like to restate it.

Mr. GENACHOWSKI. No, Senator, I do not support reinstatement of the Fairness Doctrine. I believe strongly in the First Amendment. I do not think the FCC should be involved in censorship of content based on political speech or opinion.

Senator HUTCHISON. Thank you very much.

Thank you, Mr. Chairman.

Senator PRYOR. Senator Klobuchar?

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Mr. Genachowski, I mentioned this Dig Once bill that Senator Warner and I have introduced, and I do not want to spend much time on that because I have some other questions. But I just want to get your commitment that you are willing to work with us on this. Just estimates again, 90 percent of broadband installation is digging up the roads, and if we can do it at the same time we have an open road because of Federal highway projects, we could save a lot of money.

Mr. GENACHOWSKI. Yes, Senator. I would love for the FCC to be a resource for you and Senator Warner in this idea and others. We are thinking about the communications infrastructure for the country for the next several decades, and some of it is a real infrastructure issue. If we can deliver the best bang for the buck for taxpayers by laying broadband lines at the same time that we are building highways, I do not see why we would not want to explore that.

Senator KLOBUCHAR. Thank you.

Another quick area is just the E-911 area. I am the Co-Chair of the E-911 Caucus. I am a former prosecutor. I did that for 8 years and saw firsthand some of these interoperability issues. The good, when we had our bridge collapse and area right in the metropolitan area had done a very good job of interoperability because of our sheriff and others, and then I have seen difficulties in the past and in some of our rural areas with that. It seems to me that is just one of the areas of our Nation's information infrastructure that may continue to elude us, absent some Federal action and Federal involvement in terms of making our emergency services more interoperable. Do you think that is something you would be willing to work on?

Mr. GENACHOWSKI. Very much so. My wife and I were not very far from the World Trade Center on 9/11. Most of my family was in either New York or Washington.

None of us should be satisfied with where we are on public safety. Chairman Rockefeller, who stepped out, and others on this Committee have been leaders on this. As one of your colleagues mentioned earlier, the 9/11 Commission urged the country to do something about public safety interoperability, and we have to do it. It is just not acceptable that fire fighters and police officers arrive at the scene of an emergency and cannot communicate with each other.

And we have a new opportunity now that we need to seize, I think, as quickly as possible around mobile broadband. Now that we are through the digital television transition, there is spectrum available for advanced mobile public safety applications for our first responders. I do not think we can move too quickly in tackling that, and it is something that I look forward to working with you on.

Senator KLOBUCHAR. Thank you. Yes, we had a horrible shooting of a police officer once, before we got better communications in our metropolitan area. Literally, the emergency personnel had seven different phone services and walkie-talkies and trying to talk to

each other while they were pursuing a suspect who had killed this cop. It was a nightmare. So that is something I will never forget.

I just came from a Judiciary hearing on competition in the wireless market in text messaging and things like that. Senator Rockefeller and I and others have a bill that we will most likely introduce in some form this year about cell phone competition. In my view, this has come a long way from the days when the movie Wall Street and Gordon Gekko had a cell phone the size of a briefcase, and we now have 270 million Americans—18 percent of Americans—do not even have a land line. And yet, while there have been some vast improvements with early termination fees and, having driven around my State this weekend, there are still huge problems with dropped calls and consumer knowledge about what they are buying and if it really works in the areas that they want to drive to or work in. So could you comment about the FCC's role as a watchdog of this area?

Mr. GENACHOWSKI. Senator, I look forward to working with you on this. I am an optimist, a believer in the potential of mobile for our country, for the U.S. to have world leadership in mobile. At the same time, we need to make sure the FCC can work with you and the Committee on doing this—that we minimize confusion, that we maximize competition and choice, and that we do everything we can to deal with complaints that consumers have and respond to them effectively.

Senator KLOBUCHAR. Thank you. The complaint right now—and this is why we had this hearing—is just concerns about some of the prices right now.

FCC website. You and I talked about this and how it used to be this model of development and innovation, and now it is lagging behind. Do you want to talk briefly about what you would like to do with that?

Mr. GENACHOWSKI. Senator, if confirmed, my goal would be to have the FCC website and its media operation be a model for the rest of the Government. The FCC should have that. It should be a 21st Century agency for the information age. I have been around this area enough to know that I will not be able to snap my fingers on day one, if I am confirmed, and make it happen. It will take some time, but the opportunities are great to have all of the various constituencies and stakeholders interested in the FCC, ordinary consumers, businesses, academics around the country, and others, be able to get online to get information easily, to have it be searchable and accessible. This is all achievable. I would like to see the FCC achieve it, and I would like to see the FCC be able to use new media to communicate clearly and in plain English with the public about what it is doing.

Senator KLOBUCHAR. Thank you. Now, of course, the question I really wanted to ask when Senator Schumer was here and we could pretend you were under oath—we could do this whole thing—was when he said that the credit card box that he—really it should have been the Genachowski Box instead of the Schumer Box. I had really wanted to ask if he had ever offered you that.

[Laughter.]

Senator KLOBUCHAR. But I chose not to do that, and because we have had such a nice and a positive hearing, we will not end that way.

Thank you very much, Mr. Genachowski.

Senator PRYOR. Thank you.

Does anybody else have any questions?

[No response.]

Senator PRYOR. Mr. Genachowski, thank you very, very much for your time here today and for making yourself available. I know you visited with many of us, if not all of us, privately in our offices, and we appreciate that.

I also think something that others have alluded to is very true, and that is, this agency is extremely important and will really benefit from your leadership and your management style there. I just think it is going to be a great era for the FCC. So thank you for your public service.

And if there are no more questions, we will excuse you and your family. If you guys would like to stay, you can, but if you would like to leave, that is completely up to you.

I will say one last thing before you leave. We are asking all the Senators who have follow-up questions to get those to us by 6 p.m. today. And that is a good sign for you because that means we are going to try to expedite your confirmation as much as possible. But that means that we would ask you to turn those around rather quickly.

So thank you very much for your time, and I am going to call up the second panel, if the Committee does not have anything else. Thank you very much.

Mr. GENACHOWSKI. Thank you.

Senator PRYOR. As he is departing the table there, as Mr. McDowell is coming forward with his family, there is going to be a little bit of a change here. So we will give everybody just a minute.

[Pause.]

Senator PRYOR. Thank you, and I want to thank everybody for trying to do such a quick change there because we had a lot of people that had to come and go.

Commissioner McDowell, once again, welcome to the Committee. I want to thank you for your past and current public service. I must say that I hear very, very positive reviews on the things you have done there at the FCC, and I think you have been a very positive force there.

I know that you have your family here. It looks like we have the members of the Phillies organization here.

[Laughter.]

Senator PRYOR. If you want to introduce your family and make your opening statement, that would be great.

**STATEMENT OF HON. ROBERT M. McDOWELL, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION**

Mr. McDOWELL. I would love to. Thank you, Senator Pryor and Senator Hutchison, so much for having me here today. It is a great honor to be here today and a great honor to accept the President's nomination.

And yes, with your permission, I would like to sort of introduce the members of my family. First of all, without their love and support, I could not do this job. It is they who really bear the brunt of supporting an FCC Commissioner. So my love of my life, my bride, the rock of our family and the wind in my sails is my bride, Jennifer.

And then there is also my son, Griffin, who is suited up to play in the beginning of the Vienna Little League town championship, their tournament. So he has been hitting in the 700s all season. Applause is welcome.

[Laughter.]

Mr. MCDOWELL. He pitched a no-hitter, and as you can imagine, his coach is very eager to have him there on time tonight for the start of the town championship. So he came all suited up, ready to go. His entourage and he, of course, will leave shortly after my opening statement.

My beautiful daughter, Mary-Shea; our youngest son, Cormac, who calls himself Coco; and my sister Tina; and my nephew, Kelliston, as well is here. And our good friend, Bonnie Moats, is going to do the honors of escorting them out as soon as we are done with the opening statement.

Of course, I owe everything to my parents. My father, Bart McDowell, a native Texan, passed away just this past January, and my mother, Martha Shea McDowell, passed away not quite four years ago. And our thoughts and prayers are with them always, but especially today.

I would also like to extend my public congratulations to Julius Genachowski and his beautiful family on his nomination, and if we are both confirmed, I look forward to working with him in the same bipartisan manner I have pursued for the past 3 years.

Furthermore, I want to acknowledge the warm friendship and support I have received from my two fellow Commissioners, Acting Chairman Mike Copps and Commissioner Jonathan Adelstein. I have enjoyed working with them over the past three years and especially in the past six months. Although we do not always agree, our disagreements are almost always pleasant. In fact, while the three of us have enjoyed this collegial time at the Commission this year, folks have started calling us the "Three Amigos." And if confirmed, I look forward to continuing to work with Mike at the Commission and Jonathan just down the street at the Rural Utilities Service, should he be confirmed for that post.

While I am on the topic of us working together, I would be remiss if I did not discuss with this Committee the digital television transition. As of midnight last Friday, 100 percent of our Nation's full-power television stations are broadcasting only in digital, except for a few analog nightlight stations which are providing DTV educational information for those who are still not ready. And we have heard of three or four that are having a little bit of trouble making the transition. But for the vast majority of consumers, the benefits are wonderful and include better picture quality, better sound quality, and more channels, all for free over the air.

Nonetheless, up to three million households remained unprepared as of June 12. The FCC, working with other government agencies, the private sector, and community organizations, is acting

rapidly to locate and help these consumers in our own version of a search-and-rescue operation.

I appreciate the continued support we have received from Congress as we implement the switch to digital, and I look forward to our agency staying focused on this issue as our number one priority until all over-the-air consumers become digital-ready.

In preparation for this hearing over the past few days, I have been reflecting on my three years at the FCC. The fact that I was appointed to the Commission the first time underscores the maxim that sometimes it is life's surprises that offer the best experiences. This position came as a surprise to me. I never pursued this office, but the opportunity to serve the American people in this way has been the highest honor of my life. What we do at the Commission literally affects the lives and liberty of all Americans every day.

The evolution of the communications marketplace has been nothing short of amazing, especially in the past three years. For instance, in 2006, the discussion regarding a wireless-only America was just getting started. Today, nearly one in five American households is wireless-only. In the meantime, 23 percent of all businesses are expected to be wireless-only by the year 2012.

In 2006, 57 million Americans subscribed to broadband services. Today the number is closer to 80 million, a 40 percent increase in 3 years. The fastest growing segment of the broadband market is wireless broadband, which has grown by nearly 400 percent since 2006. In fact, American consumers account for nearly 30 percent of all mobile web-surfing worldwide, making the U.S. first in the world. Many analysts predict that Internet traffic could quadruple by the year 2011, and mobile wireless technologies will account for a large share of that growth.

Three years ago, social networking sites such as Facebook, MySpace, and Twitter were in their infancy, while traditional media, such as newspapers and broadcasters, enjoyed healthy bottom lines. When I first started at the FCC, the market for online videos was just starting to germinate. Today, Americans watch nearly 17 billion online videos each month, and that figure is growing at 16 percent per month. Furthermore, nearly 15 million Americans are watching video on their mobile devices, and that figure is growing by more than 50 percent per year. At the same time, traditional media have witnessed a dramatic decline in the face of the competitive pressures coming from new media. So much has changed so fast.

Increasingly, America's economy rides on the rails of the communications sector. As the Government contemplates policies to help promote sustainable economic growth, the role of the FCC is more important now than ever. In the coming months, the Commission's primary focus should be to foster economic expansion by helping shape an environment that is attractive to capital investment so that the creative brilliance of America's entrepreneurs can continue to bear fruit to the benefit of all consumers.

During my time at the Commission, I have tried to promote economic prosperity, competition, and innovation by supporting initiatives to make it easier for new entrants to compete in the video marketplace, spurring the roll-out of broadband by, among other things, taking steps to open up the use of the television white

spaces, and fighting to ensure that inventors of new wireless medical devices are not restrained by Government red tape.

America's technological future could be brilliant if we, as policymakers, make the right choices. The wireless sector is one of the most promising under the FCC's purview. Yet, sometimes we look at the wireless market through the lens of its wireline ancestor. For instance, we all know the name of the inventor of the wireline phone, Alexander Graham Bell, of course. But few can name the inventor of the wireless phone, a device used by more than half of the world's population. His name is Martin Cooper. Mr. Cooper estimates that technological innovation has enabled us to double the amount of information transmitted over the radio spectrum every two and a half years. As a result, we are two trillion times more spectrally efficient today than when the radio was first invented in 1897. This concept is known as Cooper's Law. This powerful trend should continue indefinitely unless the Government adopts policies that frustrate rather than foster innovation.

If I am confirmed, you have my commitment to support policies that will promote and not stifle freedom, competition, innovation, and more choices. If we adopt such policies, we will create boundless opportunities for American consumers and entrepreneurs alike.

Additionally, if confirmed, I will commit myself to continuing to conduct the affairs of my office in a bipartisan and ethical manner, and I will continue to make decisions as an independent commissioner at an independent administrative agency.

Furthermore, I will work to support policies that will promote vigorous growth in the broadband markets to ensure that all Americans have access to the promise of high-speed Internet services and to ensure that the Internet remains robust, open, and safe. The FCC's broadband plan due to Congress in February will play a crucial role in America's broadband future.

If confirmed, I will also continue to advocate for reform of FCC processes to make the Commission more open, transparent, and user-friendly. For instance, it would be helpful if notices of proposed rulemaking actually contained proposed rules. We could also serve the public interest by following Congress' mandate to get to work adjudicating the backlog of over 1.2 million broadcast indecency complaints, some of which are older than my children.

Also, if confirmed, I will continue to work to reform the universal service and intercarrier compensation regimes to contain skyrocketing costs while ensuring that all Americans have access to affordable, quality services, as directed by Congress.

Finally, if confirmed, I will continue to work to clear away unnecessary regulatory underbrush and barriers to entry that inhibit the creation of a dynamic and free communications marketplace.

These are just a few ideas. We have much, much more to do.

In conclusion, I have cherished every day I have served as a Commissioner. I have been honored to work with not only some of the finest people ever to serve on the Commission, but the hundreds of talented career professionals who work at the FCC as well. And, if confirmed, I would be humbled to serve with them again.

Senator Pryor and Senator Hutchison and other Members of the Committee, thank you again for the opportunity to appear before

you today. This concludes my statement, and I look forward to answering your questions.

[The prepared statement and biographical information of Mr. McDowell follows:]

PREPARED STATEMENT OF HON. ROBERT M. MCDOWELL, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Ranking Member Hutchison and Members of the Committee, it is a privilege to appear before you today. I am deeply honored by President Obama's decision to nominate me to continue to serve as a Commissioner of the Federal Communications Commission.

With your permission, I would like to introduce some members of my family. I would not be here today were it not for their love and support. First and foremost is the wind in my sails, and the rock of our family, my bride Jennifer. With her are our children: our eldest son, Griffin; our daughter, Mary-Shea and our youngest son, Cormac. Also here are my sister, Tina and my nephew, Kelliston, a recent college graduate.

Of course, I owe everything to my parents. My father, Bart McDowell, passed away just this past January. And my mother, Martha Shea McDowell, passed away not quite 4 years ago. Our thoughts and prayers are with them always, but especially today.

I would also like to extend my public congratulations to Julius Genachowski, and his beautiful family, on his nomination. If we are both confirmed, I look forward to working with him in the same bi-partisan manner I have pursued for the last 3 years.

Furthermore, I want to acknowledge the warm friendship and support I have received from my two fellow Commissioners, Acting Chairman Mike Copps and Commissioner Jonathan Adelstein. I have enjoyed working with them over the past 3 years—and especially in the past 6 months. Although we don't always agree, our disagreements are almost always pleasant. In fact, while the three of us have enjoyed this collegial time at the Commission this year, folks have started calling us the "Three Amigos." If confirmed, I look forward to continuing to work with Mike at the Commission and Jonathan at the Rural Utilities Service, should he be confirmed for that post.

While I am on the topic of us working together, I would be remiss if I did not discuss with this Committee the digital television transition. As of midnight last Friday, 100 percent of our Nation's full-power television stations are broadcasting only in digital, except for a few analog "nightlight" stations which are providing DTV educational information for those who are still not ready. For the vast majority of consumers the benefits are wonderful and include: better picture quality, better sound quality and more channels—all for free over-the-air. Nonetheless, up to three million households remained unprepared as of June 12. The FCC, working with other government agencies, the private sector and community organizations, is acting rapidly to locate and help these consumers in our own version of a "search and rescue" operation. I appreciate the continued support we have received from Congress as we implement the switch to digital, and I look forward to our agency staying focused on this issue as our number one priority until all over-the-air consumers become digital-ready.

In preparation for this hearing over the past few days, I have been reflecting on my 3 years at the FCC. The fact that I was appointed to the Commission the first time underscores the maxim that sometimes it is life's surprises that offer the best experiences. This position came as a surprise to me. I never pursued this office, but the opportunity to serve the American people in this way has been the highest honor of my professional life. What we do at the Commission literally affects the lives and liberty of all Americans every day.

The evolution of the communications marketplace has been nothing short of amazing—especially in the last 3 years. For instance, in 2006, the discussion regarding a wireless-only America was just getting started. Today, nearly one in five American households is wireless-only. In the meantime, 23 percent of all *businesses* are expected to be wireless-only by 2012.

In 2006, 57 million Americans subscribed to broadband services. Today the number is closer to 80 million—a 40 percent increase in 3 years. The fastest growing segment of the broadband market is wireless broadband, which has grown by nearly 400 percent since 2006. Many analysts predict that Internet traffic could quadruple by 2011, and mobile wireless technologies will account for a large share of that growth.



Three years ago, social networking sites such as Facebook, MySpace and Twitter were in their infancy, while traditional media, such as newspapers and broadcasters, enjoyed healthy bottom lines. When I first started at the FCC, the market for online videos was just starting to germinate. Today, Americans watch nearly 17 billion online videos *each month*—and that figure is growing 16 percent per month. Furthermore, nearly 15 million Americans are watching video on their mobile devices, and that figure is growing by more than 50 percent per year. At the same time, traditional media have witnessed a dramatic decline in the face of the competitive pressures coming from new media. So much has changed so fast.

Increasingly, America's economy rides on the rails of the communications sector. As the government contemplates policies to help promote sustainable economic growth, the role of the FCC is more important now than ever. In the coming months, the Commission's primary focus should be to foster economic expansion by helping shape an environment that is attractive to capital investment so that the creative brilliance of America's entrepreneurs can continue to bear fruit—to the benefit of all consumers.

During my time at the Commission, I have tried to promote economic prosperity, competition and innovation by: supporting initiatives to make it easier for new entrants to compete in the video marketplace; spurring the rollout of broadband by, among other things, taking steps to open up the use of the television "white spaces"; and fighting to ensure that inventors of new wireless medical devices are not restrained by government red tape.

America's technological future could be brilliant if we, as policymakers, make the right choices. The wireless sector is one of the most promising under the FCC's purview, yet sometimes we look at the wireless market through the lens of its wireline ancestor. For instance, we all know the name of the inventor of the wireline phone, Alexander Graham Bell, of course. But few can name the inventor of the *wireless* phone—a device used by more than half of the world's population. His name is Martin Cooper. Mr. Cooper estimates that technological innovation has enabled us to double the amount of information transmitted over the radio spectrum every two-and-one-half years. As a result, we are *two trillion* times more spectrally efficient today than when the radio was first invented in 1897. This concept is known as "Cooper's Law." This powerful trend should continue indefinitely, unless the government adopts policies that frustrate, rather than foster, innovation.

If I am confirmed, you have my commitment to support policies that will promote, not stifle, freedom, competition, innovation and more choices. If we adopt such policies, we will create boundless opportunities for American consumers and entrepreneurs alike.

Additionally, if confirmed, I will commit myself to continuing to conduct the affairs of my office in a bi-partisan and ethical manner, and I will continue to make decisions as an independent commissioner at an independent administrative agency.

Furthermore, I will work to support policies that will promote vigorous growth in the broadband markets to ensure that all Americans have access to the promise of high-speed Internet services, and that the Internet remains robust, open and safe. The FCC's broadband plan due to Congress in February will play a crucial role in America's broadband future.

If confirmed, I will also continue to advocate for reform of FCC processes to make the Commission more open, transparent and user-friendly. For instance, it would be helpful if notices of proposed rulemaking actually contained *proposed rules* for adequate public comment. We could also serve the public interest by following Congress' mandate to get to work adjudicating the backlog of over 1.2 million broadcast indecency complaints—some of which are older than my children.

Also, if confirmed, I will continue to work to reform the Universal Service and intercarrier compensation regimes to contain skyrocketing costs while ensuring that all Americans have access to affordable quality services, as directed by Congress.

Finally, if confirmed, I will continue to work to clear away unnecessary regulatory underbrush and barriers to entry that inhibit the creation of a dynamic and free communications marketplace.

These are just a few ideas. We have much, much more to do.

In conclusion, I have cherished every day I have served as a Commissioner. I have been honored to work with not only some of the finest people ever to serve on the Commission, but the hundreds of talented career professionals who work at the FCC as well. And, if confirmed, I would be humbled to serve with them again.

Mr. Chairman, Ranking Member Hutchison and Members of the Committee, thank you again for the opportunity to appear before you today. This concludes my statement, and I look forward to answering your questions.

## A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):  
Robert Malcolm McDowell.
2. Position to which nominated: Commissioner, Federal Communications Commission (FCC).
3. Date of Nomination: To be determined. (Intent to nominate announced June 2, 2009.)
4. Address (List current place of residence and office addresses):  
Residence: Information not released to the public.  
Office: 445 12th Street, SW, Washington, DC 20554.
5. Date and Place of Birth: June 13, 1963; Washington, D.C.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).  
Spouse: Jennifer Griffin McDowell; homemaker and self-employed.  
Children: Griffin Malcolm McDowell (9); Mary-Shea Virginia McDowell (7); Cormac Augustine McDowell (2).
7. List all college and graduate degrees. Provide year and school attended.  
Duke University, Bachelor of Arts in Political Science, *cum laude*, 1985.  
College of William and Mary, Marshall-Wythe School of Law, Juris Doctor, 1990.
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.  
For a full summary of my post-undergraduate employment, please see the attached resume. Here is a highlight of management-level jobs that relate to the position for which I hope to be nominated:
 

2006–present	<i>Commissioner, Federal Communications Commission.</i>
1999–2006	<i>Competitive Telecommunications Association (CompTel), Washington, D.C.; Senior Vice President and Assistant General Counsel</i>
1998–1999	<i>America's Carriers Telecommunications Association (ACTA), McLean, Virginia; Executive Vice President and General Counsel</i>
1993–1998	<i>Helein &amp; Associates, P.C., Washington, D.C., McLean, Virginia; Senior Attorney</i>
1990–1993	<i>Arter &amp; Hadden, Washington, D.C.; Associate Attorney</i>
1985–1987	<i>Virginia House of Delegates, Richmond, VA; Chief Legislative Aide to a Member of the House of Delegates.</i>
9. Attach a copy of your resume. A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last 5 years.  
1996–2004 *Virginia Board for Contractors, Gubernatorial appointee (1996); re-appointed (2000).*
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last 5 years.
 

2005–present	<i>Co-Trustee (with spouse) of McDowell Family Trust (estate planning vehicle for myself, my spouse and our children).</i>
2005–present	<i>Successor Trustee, Martha Louise Shea McDowell Revocable Trust (estate vehicle of my late mother).</i>
1999–2006	<i>Senior Vice President and Assistant General Counsel, Competitive Telecommunications Association (CompTel).</i>
2005–2006	<i>CompTel Political Action Committee (CompTel-PAC), Treasurer.</i>
1994–present	<i>Director, McLean Project for the Arts (501(c)(3)), McLean, Virginia (1994–present); Vice President (2002–2005); Chairman of Board (2005–2007).</i>
1996–2004	<i>Member, Virginia Board for Contractors (statutory board—gubernatorial appointee).</i>
12. Please list each membership you have had during the past 10 years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

1999–2000	<i>North American Numbering Council.</i>
1999–2000	<i>Board of Directors, North American Numbering Plan Billing and Collection, Inc.</i>
1999–2005	<i>Republican Majority Fund, Republican National Committee, National Finance Committee.</i>
1996–2004	<i>Virginia Board for Contractors, Gubernatorial Appointee.</i>
1994–1995	<i>Governor's Advisory Board for a Safe and Drug-Free Virginia, Gubernatorial Appointee.</i>
1997–1999	<i>Friends of the Red Cross, National Capital Chapter. Washington, D.C. Corporate Donations Committee.</i>
1996–2004	<i>Virginia Board for Contractors, Gubernatorial Appointee (1996); re-appointed (2000).</i>
1995–2006	<i>Northern Virginia Republican Business Forum.</i>
1994–present	<i>McLean Project for the Arts, McLean, VA. Chairman, Board of Directors (2005–2007), Director (1994–present) and Pro Bono Counsel (1994–2005).</i>
1991–present	<i>Federal Communications Bar Association.</i>
1990–present	<i>Virginia State Bar.</i>
1990–2005	<i>Fairfax County Republican Committee.</i>
1990–2003	<i>Republican Club of Greater Reston.</i>
Periodically	<i>Duke University Club of Washington.</i>
Nearly life-long	<i>Our Lady of Good Counsel Catholic Church, Vienna, Virginia.</i>
Nearly life-long	<i>Cardinal Hill Swim and Racquet Club, Vienna, Virginia.</i>

To the best of my knowledge, no organization I have belonged to discriminates in any way.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

I have been a candidate for public office twice. The first candidacy was for the Virginia Senate (32nd District) in 1995. The second candidacy was for the Virginia House of Delegates (35th District) in 2003. Neither campaign has any debt.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

To the best of my ability and knowledge, my research reveals the following:

Virginians for Jerry Kilgore (Governor—2005) \$700.

Jim Hyland for Delegate (2005) \$500.

George W. Bush for President, Inc. (1999) \$950.

Gilmore for Governor (1997) \$1,500 (in-kind and cash).

Below is a summary of political offices held during the past 10 years:

2004	<i>Bush-Cheney 2004 Office of Advance, Site Advance Coordinator. Victory 2004 (Republican National Committee), Advance Team Leader. Republican Majority Fund. National Finance Committee. Alternate Delegate At-Large from Virginia to the Republican National Convention.</i>
2003	<i>Virginia House of Delegates, 35th District, Republican Nominee.</i>
1999–2000	<i>Bush-Cheney 2000 Florida Recount Effort. Team Leader of Bush-Cheney Observation Team #4 in Broward County and Miami Dade County hand recounts. Also served as Floor Manager and Volunteer Attorney in Miami-Dade. Fundraiser. Served on Host Committees of two fundraising events in Virginia. Delegate from Virginia to Republican National Convention. Office of Advance. Informal Policy Adviser.</i>
1994–2005	<i>Tom Davis for Congress. Member, Finance Committee; grass-roots organizer; policy adviser.</i>
1990–2006	<i>Member, Fairfax County Republican Committee.</i>
1991–2003	<i>Republican Club of Greater Reston, Reston, VA. Founding Board Member; Chairman, Political Liaison Committee (1992); Legal Counsel (1993–94, 1996).</i>

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Latinos in Information Science and Technology Association (LISTA), Chairman's Award, 2008.

Order of the Barristers, College of William and Mary, Marshall-Wythe School of Law.

*Cum Laude*, Duke University.

Dean's List, Duke University.

Virginia Board for Contractors, Resolution honoring distinguished service (June 2005).

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics rel-

evant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

*Articles and Op-eds*

- “Are the LECs Choking-Off Casual Calling?” *Phone+ Magazine*, May, 1997;  
 “Protecting Consumers or Slamming the Door On Competition? How Smaller Carriers Will Fare Under Proposed Anti-Slamming Rules,” *Phone+ Magazine*, October, 1997;  
 “Apocalypse 1998: RBOC ‘Political Pressure’ in Washington,” *Phone+ Magazine*, April, 1998;  
 “It’s Time to Regulate LEC Billing,” *Phone+ Magazine*, February, 1999;  
 “Are You Ready for the Digital TV Transition?” Op-ed in the *Richmond Times-Dispatch*, February 17, 2008;  
 “Broadband Baloney,” Op-ed in the *Wall Street Journal*, July 24, 2007;  
 “Who Should Solve This Internet Crisis?” Op-ed in the *Washington Post*, July 28, 2008;  
 “Are You Ready For Feb. 17 Transition?” Op-ed in the *Richmond Times-Dispatch*, December 1, 2008.

*Prepared Speeches*

- Ceremony Honoring Dr. Benjamin Hooks*, July 19, 2006, Federal Communications Commission, Washington, D.C.  
*The Media Institute Black-Tie Awards*, October 16, 2006, Four Seasons Hotel, Washington, D.C.  
*3G Americas Annual Technology Seminar: The Promise of the 700 MHz Band*, October 18, 2006: 11:05–11:20 p.m., Ronald Reagan Building, Washington, D.C.  
*FCBA Luncheon*, November 15, 2006, Mayflower Hotel, Washington, D.C.  
*Financial Times: Regulating the New Era: Can Regulators Keep Up with the Pace of Technology?*, November 22, 2006, The Dorchester, London.  
*Credit Suisse Conference*, December 5, 2006, Crowne Plaza Hotel, 1605 Broadway, NY.  
*NTCA Keynote*, February 6, 2007, Walt Disney World Dolphin Hotel, Lake Buena Vista, FL.  
*Duke University Law School: A Conversation with Commissioner McDowell*, February 19, 2007, Durham, NC.  
*Catholic University Columbus School of Law Telecom Conference: Broadband Deployment in a Multi-Media World: Moving Beyond the Myths to Seize the Opportunities*, March 15, 2007, Catholic University of America, Washington, D.C.  
*Pike & Fischer’s Broadband Policy Summit III*, June 7, 2007, The Ritz-Carlton in Arlington, VA.  
*USTTI: About the FCC*, June 15, 2007, USTTI, 1150 Connecticut Ave., Washington, D.C.  
*Spectrum Management Conference: Spectrum Issues Currently at the Top of the FCC’s Agenda*, September 17, 2007, Capitol Hilton Hotel, Washington, D.C.  
*Noche de Gala, Hispanic Foundation for the Arts*, October 2, 2007, Mayflower Hotel, Washington, D.C.  
*Media Institute*, November 19, 2007, Four Seasons, Washington, D.C.  
*Summit on 911 Call Center Operations and Next Generation Technologies*, February 6, 2008, Federal Communications Commission, Washington, D.C.  
*Duke University: A Conversation with Commissioner McDowell*, February 14, 2008, Durham, NC.  
*Tech Policy Summit*, March 27, 2008, Hollywood, CA.  
*2008 Quello Communications Law and Policy Symposium*, April 23, 2008, National Press Club, Washington, D.C.  
*Pacific Rim Policy Exchange*, June 7, 2008, Watermark Restaurant, Hong Kong.  
*National Religious Broadcasters Capitol Hill Media Summit Luncheon*, September 17, 2008, National Press Club.  
*Summit on Pandemic Preparedness: Enhancing Communications Response for Health Care and First Responders*, September 18, 2008, Federal Communications Commission, Washington, D.C.

*Vanderbilt Forum on Pediatric Obesity: Developing Unique Partnerships to Halt the Epidemic*, October 15, 2008, Monroe Carell Jr. Children's Hospital at Vanderbilt, Nashville, TN.

*Latinos in Information Science and Technology Association ("LISTA") National Latino Technology Achiever Awards*, October 30, 2008, Hyatt Regency Miami, FL.

*Duke University: A Conversation with Commissioner McDowell*, January 15, 2009, Durham, NC.

*Media Institute Luncheon*, January 28, 2009, Four Seasons, Washington, D.C.

*FCBA Luncheon*, February 2, 2009, Capitol Hilton, Washington, D.C.

*Northern Virginia Technology Council Breakfast*, February 10, 2009, Patton Boggs—8484 Westpark Drive, 9th Floor, McLean, VA.

*National Congress of American Indians: 6th Annual Dialogue on Improving Telecommunications Access in Indian Country*, March 4, 2009, Federal Communications Commission, Washington, D.C.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

4/15/08—Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives. FCC Oversight.

12/13/07—Before the Committee on Commerce, Science, and Transportation, U.S. Senate. FCC Oversight.

12/5/07—Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives. FCC Oversight.

7/24/07—Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives. FCC Oversight.

3/14/07—Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives. FCC Oversight.

2/1/07—Before the Committee on Commerce, Science, and Transportation, U.S. Senate. Accessing the Communications Marketplace: A View from the FCC.

3/9/06—Before the Committee on Commerce, Science, and Transportation, U.S. Senate. Confirmation Hearing.

6/23/1998—Before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Energy and Commerce, U.S. House of Representatives. Protecting Consumers Against Slamming.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have served on the FCC as a Commissioner for approximately 3 years. My time there has given me a wealth of experience and understanding of the FCC's operations and the policy matters it addresses. Additionally, I have benefited from tremendous exposure to a wide variety of issues that have come before the Commission—casting over 700 votes in the process. This body of experience sits atop a foundation of sixteen years in the private sector counseling telecommunications entrepreneurs. I wish to serve again because I believe that I can continue to use this experience effectively to help bring the benefits of competition in the communications marketplace to American consumers.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

Again, having served for approximately 3 years on the Commission has given me the experience and insight needed to help advise the FCC's Chairman on management and cost accounting controls. The FCC Chairman is, by law, the Chief Executive Officer of the Commission and is, therefore, in charge of all day-to-day Commission management, including all financial, administrative and operational matters. It is my hope, however, that the new permanent Chairman will operate the Commission in a more open, transparent and collegial manner than has been done in the recent past. If confirmed, I look forward to working with the new Chairman in

a positive, constructive and non-partisan manner to help manage an agency that best serves the public interest.

20. What do you believe to be the top three challenges facing the department/agency, and why?

The number one priority for the FCC should be to help grow America's economy again. The second priority is intertwined with the first, which is to help increase access to broadband facilities and services across America so that consumers will have before them more choices, more powerful innovations, faster speeds and lower prices as brought about by more competition. The third priority for the Commission is to reform its processes and open itself up to become more transparent in its operations and more user-friendly for consumers.

#### B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

To the best of my ability at this time, I know of no potential conflicts of interest.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

I have maintained my affiliation with the McLean Project for the Arts (MPA) as a member of its board of directors. MPA is a 501 (c)(3) non-profit corporation dedicated to connecting the Northern Virginia and Washington, D.C. metropolitan community with the visual arts. I have served as either a director and/or officer of MPA since 1994. At this time, and to the best of my ability, I do not foresee a potential conflict of interest as a result of my association with MPA. As always, I will seek the guidance of the FCC's Office of General Counsel, the Office of Government Ethics and my personal ethics counsel at the Virginia State Bar to avoid either a conflict of interest, or even an appearance of a conflict of interest, should such a scenario arise.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

To the best of my ability at this time, I am unaware of any actual or potential conflicts of interest. As always, I will seek the guidance of the FCC's Office of General Counsel, the Office of Government Ethics and my personal ethics counsel at the Virginia State Bar to avoid either a conflict of interest or appearance of a conflict of interest should such a scenario arise.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In my position as Senior Vice President and Assistant General Counsel of CompTel (1999-2006), I may have had conflicts concerning matters before the FCC to which CompTel was a party. Under the FCC's ethics guidelines in effect as of my swearing in on June 1, 2006, and pursuant to my Ethics Agreement with the Senate Commerce Committee at that time, I was under a one-year ban from participating in any matter involving specific parties in which CompTel was a party until June of 2007. Having now been at the Commission for approximately 3 years, I am no longer under that ban. Accordingly, I do not anticipate my work at CompTel producing any additional conflict situations.

The Martha Louise Shea McDowell Revocable Trust ("Trust") was created on January 26, 2005, as an estate management vehicle for my now-deceased mother, Martha McDowell. She died on July 6, 2005. The Trust designated Robert McDowell to be successor trustee upon her death. The purpose of the Trust is to distribute the Trust's assets to Trust beneficiaries. All assets were distributed in 2006; however, the Trust remains technically in existence pursuant to the advice of personal counsel. It holds a partial interest in my residence concurrently with the McDowell Family Trust. It holds no other assets.

I do not foresee any existing arrangements resulting in potential conflicts of interest.

5. Describe any activity during the past 10 years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As a government affairs professional for CompTel from 1999 to 2006, I was engaged in advocacy regarding several pieces of legislation, appellate cases and other

matters involving telecommunications policy. Please see the lobbying disclosure forms filed with the U.S. Congress by CompTel during the course of my employment there in further response to this question.\*

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Early in my tenure on the Commission I faced at least two situations where my prior employment by CompTel came into question vis-a-vis a potential conflict of interest. In the first case in June of 2006, the parties withdrew their pleadings rendering any conflict moot. In the second case, the proposed merger of AT&T and BellSouth, I consulted with the FCC's Office of General Counsel, the Office of Government Ethics and my personal ethics counsel at the Virginia State Bar. I determined that the explicit language of my Ethics Agreement with the Senate Commerce Committee left me with no choice but to remain recused from participating in that matter. Attached is a copy of my decision in that case.

In the unlikely event that a conflict or appearance of a conflict should arise again, I will continue to pursue an ethical course, with ample consultation with legal ethics experts, that maintains the highest of ethical standards.

#### C. LEGAL MATTERS

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

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

I have not been a party to any litigation or administrative proceeding in my personal capacity. However, in my professional capacity as an attorney in private practice and as in-house counsel, I have been an attorney of record in numerous cases before both courts and administrative agencies. In addition, to the best of my knowledge, no business of which I have been an officer has ever been involved as a party in civil litigation.

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

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None of which I am aware.

#### D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

#### RESUME OF ROBERT M. MCDOWELL

##### Experience

2006–present—*Federal Communications Commission*, Washington, D.C., *Commissioner*.

Appointed by President George W. Bush in 2006 and unanimously confirmed by the Senate to five member independent agency.

\* Documents have been retained in Committee files.

Duties include: formulating and establishing American communications policy covering the wireless, media, and Internet industries, in addition to international policy matters.

Sample issues: creating rules governing wireless auctions; establishing framework for unlicensed use of TV “white spaces” spectrum; developing incentives and removing regulatory barriers to encourage development of new broadband technologies; reviewing public interest benefits as part of approval process of proposed corporate mergers; and adjudicate enforcement proceedings.

Lead personal office of up to eight professionals. Manage office budget. Work in leadership position with up to hundreds of professional Commission staff.

Consult with Members of Congress, White House and Executive Branch agencies. Testify before Congressional committees. Seek and analyze opinion from general public and affected industries. Exchange policy ideas with foreign regulators.

Write and deliver speeches; give media interviews domestically and abroad; write and publish op-eds.

1999–2006—*Competitive Telecommunications Association (CompTel)*, Washington, D.C. *Senior Vice President and Assistant General Counsel*.

Served as principal Legislative and Executive Branch policy advocate to the Nation’s oldest trade association representing the competitive wireline telecommunications industry.

Formulated and advocated policy initiatives before Congress, the White House, the Federal Communications Commission, and executive agencies, (e.g., advocating policy positions on antitrust and international matters, lobbying for fair implementation of the Telecommunications Act of 1996, etc.).

Created and led successful strategic communications and grassroots lobbying campaigns with multi-industry coalitions. Hired and managed vendors and outside consultants.

Founded association’s political action committee (PAC) and political support programs.

Led teams consisting of dozens of in-house professionals and outside consultants in pursuit of policy objectives. Co-managed \$800,000 legal affairs and policy budget. Served as senior business executive and primary attorney responsible for management of association business affairs.

Served as media spokesperson on behalf of CompTel for many issues.

Board of Directors: North American Numbering Council; North American Numbering Plan Billing and Collection, Inc. (1999–2000); Internet Innovation Alliance (2004–2006).

1998–1999—*America’s Carriers Telecommunications Association (ACTA)*, McLean, Virginia. *Executive Vice President and General Counsel*.

Chief legal officer of national trade association of over 260 telecom service providers. Led strategic bargaining and negotiating efforts in merger of ACTA with the Competitive Telecommunications Association (CompTel) (see above).

Responsibilities included: formulating telecom policy positions; authoring comments, pleadings and appellate briefs before the FCC, state agencies and Federal appellate courts related to the implementation of the Telecommunications Act of 1996 and other matters; advocating policies to promote telecommunications competition in international markets; testifying before Congress; advocating before the White House and administrative agencies; and serving as primary media spokesperson for the association.

1993–1998—*Helein & Associates, P.C.*, Washington, D.C., McLean, Virginia. *Senior Attorney*.

Led successful effort to build and manage start-up telecommunications law and business consulting firm. Primary responsibilities included: representing entrepreneurial telecommunications companies before Federal, state, and international regulatory agencies and courts; advising clients on general corporate governance; authoring pleadings and briefs before trial and appellate courts; leading negotiations in merger and acquisition initiatives; drafting asset purchase agreements and other corporate legal documents; serving as outside *General Counsel* to start-up interexchange carrier; and advocating intellectual property matters before the U.S. Patent and Trademark Office and U.S. Copyright Office.



Served as outside *Deputy General Counsel* to America's Carriers Telecommunications Association (see above).

1990–1993—*Arter & Hadden*, Washington, D.C. *Associate Attorney*.

Primary focus in Washington office of 350-attorney national law firm: telecommunications law. Other areas of concentration: appellate litigation and intellectual property law. A portion of this firm's telecom practice group later formed Helein & Associates, P.C. (see above).

1989–1990—*Office of the U.S. Attorney*, Norfolk, VA. *Third-year Practice Intern*.

Prosecuted criminal cases in Federal court under Virginia's third-year law student practice rule.

Summer, 1989—*Law Offices of Sam Perlmutter, P.C.*, Los Angeles, CA. *Summer Associate*.

Focus on: copyright, bankruptcy, contracts, and labor issues for motion picture industry.

Summer, 1988—*Metro-Goldwyn-Mayer/United Artists*, Los Angeles, CA. *Law Clerk*.

Drafted international syndication agreements and helped negotiate contracts with talent agencies.

1985–1987—*Virginia House of Delegates*, Richmond, VA. *Chief of Staff* for Delegate Robert T. Andrews.

Managed legislative office; lobbied; wrote news releases and position papers; and drafted legislation.

#### **Education**

*College of William and Mary, Marshall-Wythe School of Law*, Williamsburg, VA; J.D., 1990. *Honors*: Order of the Barristers.

*Duke University*, Durham, NC; B.A. Political Science (International Relations), 1985. *Honors*: *Cum Laude*, Dean's List.

#### **Bar Memberships and Court Admissions**

Virginia State Bar; Supreme Court of the United States of America; Supreme Court of Virginia; United States Courts of Appeals: District of Columbia Circuit, First Circuit, Fourth Circuit and Fifth Circuit; and United States District Court for the Eastern District of Virginia.

#### **Civic and Political Activities (Partial List)**

Governor's Advisory Board for a Safe and Drug-Free Virginia (gubernatorial appointee, 1994–1995); McLean Project for the Arts, Chairman (2005–2007); Board Member (1994–present); Virginia Board for Contractors (gubernatorial appointee, 1996–2004). More available upon request.

#### **Publications and Appearances**

Have been featured and quoted in numerous articles and television news programs and given many speeches. Have authored several articles and opinion pieces. More available upon request.

#### **Personal**

Married to Jennifer Griffin McDowell. We have three children and live on what is left of the family farm in Vienna, Virginia.

#### ATTACHMENT—SECTION B—QUESTION 6

#### **Statement of Commissioner Robert M. McDowell**

*December 18, 2006*

RE: Application for Transfer of Control Filed by AT&T Inc. and BellSouth Corporation, *Memorandum Opinion and Order*, WC Docket No. 06–74

Good afternoon. Thank you for coming.

Over the past few days, I have devoted a tremendous amount of time and energy deliberating my decision regarding my potential participation in the consideration of the AT&T/BellSouth merger. I have also tried hard to encourage some of my colleagues on the Commission to negotiate in good faith—sadly, to no avail. This state of affairs is personally disappointing to me. It appears that the lingering question

of my involvement is being used as yet another excuse for delay and inaction. So, to remove that excuse from the equation, I am announcing my decision this evening. Given the vast speculation surrounding this issue, and in the spirit of transparency, I think it is important for me to publicly explain the reasons for my decision.

By way of background, on February 6, 2006, I was nominated by President Bush to serve as a Commissioner on the Federal Communications Commission. At that time, I was employed as Senior Vice President and Assistant General Counsel of COMPTTEL, a trade association representing telecommunications entrepreneurs, with many competing against AT&T and BellSouth. As of that date, I no longer participated in the formulation of COMPTTEL policy, nor was I serving any longer as a policy advocate for COMPTTEL. Then, on March 5, 2006, AT&T announced its intention to merge with BellSouth.<sup>1</sup> The next day, COMPTTEL announced its opposition to the merger.<sup>2</sup>

Meanwhile, as part of the Senate confirmation process, the FCC's Office of General Counsel (OGC) reviewed my interests in order to ensure compliance with Federal conflict of interest statutes<sup>3</sup> and regulations.<sup>4</sup> Upon completion of its review, OGC prepared on my behalf an Ethics Agreement, which states, "upon confirmation, Mr. McDowell will resign his position with COMPTTEL and will for 1 year following his resignation disqualify himself from participating in any particular matter involving specific parties in which COMPTTEL is a party, or represents a party."<sup>5</sup> The AT&T/BellSouth merger would be just such a matter.

Appropriately, the conflict of interest I would bring to the FCC in deciding the fate of the proposed merger was the primary topic of my March 9 confirmation hearing. In fact, Senator George Allen questioned me on this matter. In my answer, I pledged that, as a commissioner, I would operate under nothing less than the highest of ethical standards.<sup>6</sup> Further, in referencing the FCC's established system governing conflicts, I was aware of the need to consult with the FCC's General Counsel, other authorities such as the Office of Government Ethics (OGE), the U.S. Code, the Code of Federal Regulations (CFR), my Ethics Agreement (which was in place at the time of my testimony), and the Virginia Rules of Professional Conduct, as needed, when making ethical and policy determinations at the FCC.

I was confirmed by the Senate on May 26, 2006. Pursuant to my Ethics Agreement, I resigned my position with COMPTTEL on May 31, 2006. Since being sworn in by Chairman Martin on June 1, 2006, I have not participated in the Commission's consideration of particular matters involving specific parties in which COMPTTEL is a party<sup>7</sup> because my Ethics Agreement, as well as the Code of Federal Regulations, expressly state I should not.<sup>8</sup> In effect, from the beginning, I have had a "red light" prohibiting me from participating in particular matters involving specific parties—in this case, a merger proceeding involving two parties, AT&T and

<sup>1</sup>See AT&T, BellSouth To Merge, *Press Release* (rel. Mar. 5, 2006) (located at <http://att.sbc.com/gen/pressroom?pid=5097&cdvn=news&newsarticleid=22140>).

<sup>2</sup>See COMPTTEL Blasts Proposed AT&T, BellSouth Merger, *Press Release* (rel. Mar. 6, 2006). Additionally, COMPTTEL has submitted about 38 filings in the instant docket. See WT Docket No. 06-74.

<sup>3</sup>See 18 U.S.C. § 208 (setting forth acts affecting a personal financial interest); 47 U.S.C. § 154 (providing that no member of the Commission shall have a financial interest in any company or other entity engaged in the manufacture or sale of telecommunications equipment, the business of communication by wire or radio, or in the use of the electromagnetic spectrum).

<sup>4</sup>See 5 C.F.R. § 2635.501 *et seq.* (containing provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of official duties). A copy of these regulations is attached at *Exhibit A*.

<sup>5</sup>Letter from Patrick J. Carney, Alternate Designated Agency Ethics Official and Assistant General Counsel, FCC, to Marilyn L. Glynn, General Counsel, Office of Government Ethics (dated Feb. 9, 2006) ("Ethics Agreement") at 1. A copy of my Ethics Agreement is attached at *Exhibit B*. OGC sent a copy of my Ethics Agreement to the Chairman of the Senate Committee on Commerce, Science, and Transportation, Senator Ted Stevens, on February 14, 2006. See Letter from Samuel L. Feder, General Counsel and Designated Agency Ethics Official, FCC, to The Honorable Ted Stevens, Chairman, Senate Committee on Commerce, Science, and Transportation (dated Feb. 14, 2006) ("Transmittal Letter"). A copy of the Transmittal Letter, which is substantively similar to the Ethics Agreement, is also attached at *Exhibit B*.

<sup>6</sup>A copy of the transcript of this exchange is attached at *Exhibit C*.

<sup>7</sup>See 47 CFR § 1.21(c).

<sup>8</sup>See Ethics Agreement at 1 ("upon confirmation Mr. McDowell will resign his position with COMPTTEL and will for 1 year following his resignation disqualify himself from participating in any particular matter involving specific parties in which COMPTTEL is a party, or represents a party"); 5 C.F.R. § 2635.502(a) ("where an employee . . . represents a party to [a particular matter involving specific parties], and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter").

BellSouth—where COMPTTEL is a party. In light of this bar, I therefore have not participated in its substantive consideration.

Against this backdrop, on December 1, 2006, citing my four colleagues' "inability to reach consensus on this matter,"<sup>9</sup> Chairman Martin announced his decision to exercise his prerogative to direct the FCC's General Counsel to "consider whether the Government's interest would be served by" permitting me to participate.<sup>10</sup>

Most recently, on December 8, Mr. Feder delivered to me a memorandum of law that sets forth his conclusion that the government's interest in this matter outweighs the concern about the appearance of a conflict of interest.<sup>11</sup> Specifically, citing 5 C.F.R. § 2635.502(d),<sup>12</sup> the Authorization Memo concludes, "you should not be barred from participating in this proceeding if you choose to do so,"<sup>13</sup> and notes that "[b]alancing these competing concerns here was difficult, and reasonable people looking at these facts could disagree about the appropriate result."<sup>14</sup> I would like to go out of my way to thank Mr. Feder and his hard-working staff for their efforts in this endeavor.

In all candor, however, I had expected a memorandum making a strong and clear case for my participation. Instead, the Authorization Memo is hesitant, does not acknowledge crucial facts and analyses, and concludes by framing this matter as an ethical coin-toss frozen in mid-air. The document does not provide me with confidence or comfort. Nor does the December 11, 2006, letter responding to the questions posed by Representatives Dingell and Markey.<sup>15</sup> I must emphasize that in no way should anyone interpret my observations as a criticism of Mr. Feder or his staff. As indicated in the Authorization Memo, reasonable minds can differ on this matter. Nonetheless, while I expected the legal equivalent of body armor, I was handed Swiss cheese.

First, the Authorization Memo is *silent* on the issue of my Ethics Agreement, which, as noted earlier, was described with specificity and transmitted to the Senate by Mr. Feder on February 14, 2006.<sup>16</sup> In fact, the memo does not even mention the Ethics Agreement, which is separate and apart from other legal and ethical standards that may apply. The Ethics Agreement clearly states that I must disqualify myself "for one year . . . from participating in any particular matter, involving specific parties, in which COMPTTEL is a party, or represents a party,"<sup>17</sup> and contains no exception to this mandate. Furthermore, the Ethics Agreement embodies representations that I made to the Senate. Senators relied on these representations when they confirmed me unanimously on May 26. Yet, the Authorization Memo offers no discussion of, let alone justification for, why or how the Ethics Agreement may be breached.<sup>18</sup>

<sup>9</sup>Letter from Kevin J. Martin, Chairman, FCC, to Congressional Leaders (dated Dec. 1, 2006). A copy of this letter is attached at *Exhibit D*.

<sup>10</sup>*See id.*

<sup>11</sup>*See* Memorandum from Samuel L. Feder, General Counsel, FCC, to Commissioner Robert McDowell, regarding Authorization To Participate in the AT&T/BellSouth Merger Proceeding (dated Dec. 8, 2006) ("Authorization Memo"). A copy of the Authorization Memo is attached at *Exhibit E*.

<sup>12</sup>*See Exhibit A*.

<sup>13</sup>Authorization Memo at 1.

<sup>14</sup>*Id.*

<sup>15</sup>*See* Letter from Samuel L. Feder, General Counsel, FCC, to The Honorable John D. Dingell, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives, and The Honorable Edward J. Markey, Ranking Member, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives (dated Dec. 11, 2006) ("Dec. 11, 2006 Letter").

<sup>16</sup>*See supra* n.5.

<sup>17</sup>Ethics Agreement at 1; Transmittal Letter at 1.

<sup>18</sup>With respect to the substance of the Authorization Memo, I must distinguish two scenarios upon which OGC relied in reaching its conclusion. First, regarding former FCC Chairman Kennard, I note that the Personal Attack and Political Editorial Rule proceeding was a rulemaking of general applicability, not an adjudicatory proceeding (or particular matter involving specific parties), which is at issue today. *See* 5 CFR § 2635.502(a)(2) (in applying this provision to rulemaking proceedings, it has been longstanding FCC policy that an employee who was personally and substantially involved in a particular rulemaking before coming to the Commission would, absent an authorization, confront a lifetime bar from participating in that rulemaking proceeding). In addition, prior to his authorization to participate as FCC Chairman in September 2000, Chairman Kennard had previously participated in that rulemaking proceeding almost twenty years earlier. *See* Statement of FCC Chairman William E. Kennard Concerning his Participation in the Personal Attack and Political Editorial Rule Proceeding, *FCC News Release* (rel. Sept. 18, 2000). Second, regarding my vote in June 2006 in support of the Universal Service Fund Contribution Methodology item, while it is true that COMPTTEL is a party in that proceeding, here again, that proceeding is a rulemaking of general applicability rather than a particular matter involving specific parties. Moreover, like the instant merger proceeding, I had not

Continued

Second, I am concerned by the advice given to OGC by the Office of Government Ethics (OGE). OGE was chartered in 1989 by President George H. W. Bush to “establish fair and exacting standards of ethical conduct for all Executive Branch employees.”<sup>19</sup> As the unbiased and dispassionate ethics counsel to Federal agencies, OGE ensures “that every citizen can have complete confidence in the integrity of the Federal Government.”<sup>20</sup> In essence, OGE’s advice is the “gold standard” for the ethical conduct of Federal employees and officials. The Authorization Memo reports that OGE Director Robert I. Cusik described the question of my participation as a “very, very close call,” and advised that “were the decision up to him, he would decide against authorization.”<sup>21</sup> I find Mr. Cusik’s opinion significant and I afford it great weight in drawing my conclusion.

Finally, last week, I sought advice from my personal ethics counsel at the Virginia State Bar. And, while the substance of that discussion is privileged and confidential, suffice it to say that I was not encouraged by their assessment.

Throughout my brief tenure here at the FCC, I have tried to be as thoughtful, transparent and direct as possible in my decisionmaking. With each decision I make, I endeavor to keep in mind why the FCC exists and what the mission of each commissioner should be; and that, of course, is to promote and protect the public interest. We must never lose sight of the fact that the ultimate shareholders in every endeavor we embark upon are the American people. In this vein, it is incumbent upon every public servant to do all that he or she can to earn the public’s trust in the integrity and impartiality of their government.

In light of these factors, I find that I have no choice but to abide by the terms of my Ethics Agreement, heed the independent advice of OGE and my personal ethics counsel, and, ultimately to follow my own personal sense of ethics.<sup>22</sup> Accordingly, I disqualify myself from this matter.

I have not reached my decision lightly. The American people expect their public servants to make tough decisions, and I have not hesitated from doing so in my brief tenure here at the Commission. The American people also demand that public servants operate under the highest of ethical standards. All too often, especially recently, they have been disappointed by those who hold public office. I hope that this is one instance where they are not disappointed.

In the meantime, I am hopeful that in the holiday spirit of making sacrifices, my four colleagues—and all the interested parties—will come back to the negotiating table in good faith to offer meaningful concessions. Because I am an incurable optimist, I am confident that this merger can be resolved with the same speed and unanimity as the SBC/AT&T and Verizon/MCI mergers of last year.

Now, my four colleagues have exclusive and unambiguous ownership of this important merger. Having only four Commissioners participate really should *not* be an impediment to progress.<sup>23</sup> There have been many stretches of time in recent history when only four Commissioners sat on the FCC. In fact, since 1990, the Commission has had fewer than five Commissioners for a combined period of over *five years*. During these periods, contentious and difficult mergers were successfully considered. And, the two Bell mergers reviewed just last year were approved unanimously by a four-member Commission. This transaction should be no different. I urge all of them to resolve their differences as soon as possible.

Sadly, I fear that my recusal from this matter has been used as a pawn by some to forgo meaningful and sincere negotiations. Now that I am removing that chess piece from the board, I hope that the twin pillars of sound negotiations are restored: good faith and sacrifice. The shareholders, employees and customers of the affected companies deserve speedy resolution of this matter. More importantly, so do the American people.

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personally participated in and was not involved in the Universal Service Fund Contribution Methodology proceeding while with COMPTTEL. Thus, although OGC gave weight to these scenarios in reaching the conclusions set forth in the Authorization Memo, the comparisons are imprecise.

<sup>19</sup> Exec. Order No. 12674, Principles of Ethical Conduct for Government Officers and Employees (rel. Apr. 12, 1989).

<sup>20</sup> *Id.*

<sup>21</sup> Authorization Memo at 7.

<sup>22</sup> Further, I will not risk jeopardizing the legal sustainability of the Commission’s decision in this matter should a party seek appeal. AT&T and BellSouth reportedly have “no objection” to my participation. See Edie Herman, *McDowell Authorized to Vote on AT&T-BellSouth Merger*, COMMUNICATIONS DAILY, Dec. 11, 2006, at 2. I am unaware, however, as to whether other parties to the proceeding have taken similar positions.

<sup>23</sup> See, e.g., Dec. 11, 2006 Letter at Tab D, which includes a number of major transactions handled on delegated authority rather than by the full Commission.

Finally, I thank you again for coming today. And, I thank my staff for their incredibly hard work, long hours and support throughout this difficult episode. I wish each of you the happiest of holidays.

EXHIBIT A—5 C.F.R. § 2635.501 *et seq.*

§ 2635.501—5 CFR Ch. XVI (1–1–06 Edition)

(e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter.

[57 FR 35042, Aug. 7, 1992, as amended at 59 FR 4780, Feb. 2, 1994; 60 FR 6391, Feb. 2, 1995; 60 FR 66858, Dec. 27, 1995; 61 FR 40951, Aug. 7, 1996; 62 FR 48748, Sept. 17, 1996]

**Subpart E—Impartiality in Performing Official Duties**

§ 2635.501 *Overview.*

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

NOTE: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver or exemption, as described in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

[57 FR 35042, Aug. 7, 1992, as amended at 62 FR 48748, Sept. 17, 1997]

§ 2635.502 *Personal and business relationships.*

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has in-

formed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

NOTE: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1).

(3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.

*Example 1:* An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

*Example 2:* An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

*Example 3:* An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

*Example 4:* An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

*Example 5:* An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

*Example 1:* The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402.

*Example 2:* A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employ-

ee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

*Example 3:* An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 *Extraordinary payments from former employers.*

(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for 2 years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

*Example 1:* Following his confirmation hearings and 1 month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For 1 year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

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EXHIBIT B—TRANSMITTAL LETTER AND ETHICS AGREEMENT

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC, February 14, 2006

Hon. TED STEVENS,  
Chairman,  
Senate Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Mr. Chairman:

At the request of the Committee, we have reviewed the financial and other interests of Robert M. McDowell, the President's nominee for Commissioner of the Federal Communications Commission, that are identified in his Public Financial Disclosure



sure Report (SF-278) and his responses to your Biographical and Financial Information Requested of Department/Agency Nominees.

As set forth in our letter dated February 9, 2006, to Marilyn L. Glynn, General Counsel, Office of Government Ethics, regarding our review of the nominee's SF-278, Mr. McDowell has agreed that within ninety days of Senate confirmation of his nomination for this position, he will divest his interest in General Electric Company and Southwestern Bell, now AT&T, in order to come into compliance with conflict of interest laws and Commission regulations and avoid even the appearance of a possible conflict. Further, so as to ensure that no conflict of interest should occur in the interim, Mr. McDowell will not participate personally and substantially in any particular matter that will have a direct and predictable effect on these entities, until the appropriate divestiture or other actions have been completed, unless he first obtains a written waiver or qualifies for a regulatory exemption.

Additionally, upon confirmation Mr. McDowell will resign his position with the COMPTEL and will for 1 year following resignation disqualify himself from participating in any particular matter, involving specific parties, in which COMPTEL is a party, or represents a party. Furthermore, we concur in the White House Counsel's Office determination that Mr. McDowell can continue his position as a member of the Board of Directors of the McLean Project for the Arts, a nonprofit educational service organization with the understanding that no fundraising is permitted, either in his personal or professional/official capacity. Mr. McDowell has agreed to be guided by the advice of the Commission's General Counsel and Designated Agency Ethics Official on any matters that may pose a potential conflict of interest or appearance thereof and to execute any necessary recusals relating to such matters.

We are of the opinion that if these steps are followed, there will not be any conflict under section 4(b) of the Communications Act, 18 U.S.C. §208, or the Standards of Ethical Conduct for Executive Branch Employees. Based on the forgoing considerations and our review of the documents provided, we find that no conflict of interest or appearance thereof should occur with respect to the nominee's service as a Commissioner, Federal Communications Commission. A copy of our letter to Ms. Glynn is enclosed for the Committee's reference.

Sincerely,

SAMUEL L. FEDER,  
*General Counsel and Designated  
Agency Ethics Official.*

Enclosure  
cc: Robert M. McDowell

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FEDERAL COMMUNICATIONS COMMISSION  
*Washington, DC, February 9, 2006*

MARILYN L. GLYNN,  
General Counsel,  
Office of Government Ethics,  
Washington, DC.

Dear Ms. Glynn:

Pursuant to 5 C.F.R. § 2634.605(c)(2), I am transmitting the Public Financial Disclosure Report (SF-278), dated January 17, 2006, filed by Robert M. McDowell, who has been nominated by the President to be a Commissioner, Federal Communications Commission.

We have reviewed the financial and other interests of Mr. McDowell as identified in his SF-278. In order to ensure compliance with Federal conflict of interest statutes and regulations, in particular 18 U.S.C. §208, and to avoid even the appearance of any conflict between his financial interests and his official duties as a member of the Federal Communications Commission, Mr. McDowell has agreed that within ninety days of Senate confirmation of his nomination for this position he will dispose of his interests in the following entities held through the Martha Louise Shea McDowell Revocable Trust:

- General Electric Co.
- Southwestern Bell (SBC).

However, as long as he retains these financial interests he will be disqualified from participating personally and substantially in any Federal Communications Commission proceeding or other particular matter that will have a direct and predictable effect on these entities, unless covered by a regulatory exemption or individual waiver issued pursuant to 18 U.S.C. § 208 (b)(1). Additionally, upon confirma-

tion Mr. McDowell will resign his position with COMPTTEL and will for 1 year following his resignation disqualify himself from participating in any particular matter involving specific parties in which COMPTTEL is a party, or represents a party. Furthermore, Mr. McDowell has agreed to be guided by the advice of the Commission's General Counsel (DAEO) on any other matters that may pose a potential conflict of interest or appearance thereof and to execute any necessary recusals relating to such matters.

We are of the opinion that divestiture of the above financial interests by the nominee is either required or reasonably necessary so as to avoid violating Federal laws and regulations or even the appearance thereof. So long as these steps are followed, we do not believe that there will be any conflict under 18 U.S.C. § 208, or the Standards of Ethical Conduct for Executive Branch Employees.

Based on the forgoing considerations and our review of the documents provided, we find that no conflict of interest or appearance thereof should occur with respect to Mr. McDowell's services as a member of the Federal Communications Commission.

Sincerely,

PATRICK J. CARNEY,  
*Alternate Designated Agency Ethics Official  
and Assistant General Counsel*

Enclosure  
cc: Robert M. McDowell

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EXHIBIT C—SENATE TRANSCRIPT

**Congressional Transcripts**

*Congressional Hearings—March 9, 2006*

**Senate Commerce, Science, and Transportation Committee Holds Hearing  
on Coast Guard Commandant Confirmation**

*List of Speakers*

Senator Ted Stevens (R-AK), Chairman	Senator Daniel K. Inouye (D-HI), Co-Chairman
Senator John McCain (R-AZ)	Senator John D. Rockefeller IV (D-WV)
Senator Conrad Burns (R-MT)	Senator John F. Kerry (D-MA)
Senator Trent Lott (R-MS)	Senator Byron L. Dorgan (D-ND)
Senator Kay Bailey Hutchison (R-TX)	Senator Barbara Boxer (D-CA)
Senator Olympia J. Snowe (R-ME)	Senator Bill Nelson (D-FL)
Senator Gordon Smith (R-OR)	Senator Maria Cantwell (D-WA)
Senator John Ensign (R-NV)	Senator Frank R. Lautenberg (D-NJ)
Senator George Allen (R-VA)	Senator Ben Nelson (D-NE)
Senator John E. Sununu (R-NH)	Senator Mark Pryor (D-AR)
Senator Jim DeMint (R-SC)	
Senator David Vitter (R-LA)	

*Witnesses:*

Robert McDowell, Nominee to Be a Commissioner at the Federal Communications Commissions

Vice Admiral Thad Allen, Nominee to Be the Commandant of the U.S. Coast Guard

STEVENS. Good afternoon.

BILL NELSON. If the Senator would notice, the Admiral has answered the question with the regard to the Coast Guard decision of the repatriating of the 15 rafters in early January. He has stated that was a Coast Guard decision after the consultation with their legal counsel.

Now that that issue has been brought to full fruition in a Federal court, where the court has said that the law was not followed, it's certainly worth bringing up that issue on those kinds of interpretations within the Coast Guard itself.

G. ALLEN. Admiral Allen, you can just watch as a referee.

STEVENS. Thank you very much, Admiral.

Anyone have any further questions to the Admiral?

We appreciate your courtesy, Admiral. We will have an Executive Session on Thursday, March 16. We'll do our best to see if we can get your nomination before that Executive Session.

Thank you very much.

T. ALLEN. Thank you, Mr. Chairman.

[Begin Robert McDowell]

STEVENS. Our next nominee is Robert McDowell, nominated to be a Commissioner of the Federal Communications Commission and to be introduced by Senator Allen.

G. ALLEN. Thank you, Rob. If you'd have a seat there.

Mr. Chairman and colleagues on the Committee, it is my pleasure this afternoon to introduce to our Committee, Robert M. McDowell.

Rob and his bride, Jennifer, are long-time friends of mine and my wife, Susan. Rob is a native of Virginia. He and his bride, Jennifer, are raising their two children, Griffin (ph) and Mary Shea (ph), who are here with us—well-behaved little pups—and they're raising on what's left of the farm in Northern Virginia that Rob grew up on.

I'm delighted that President Bush has nominated Rob to serve as Commissioner on the Federal Communications Commission. I'm confident he'll do an outstanding job there.

I'm going to put a whole statement in the record, but let me highlight why I think he's extraordinarily qualified to serve on the FCC.

Rob brings with him approximately 16 years of private sector experience in the communications industry. I think that experience alone makes him a tremendous asset to the Commission from the perspective that he has had.

He has long been a passionate individual about public service. When I was serving as Governor of Virginia, I actually appointed Rob to not one but two different Boards and Commissions: one dealing with combating drugs in Virginia and the other as a consumer perspective on the Board of Contractors.

He served on both of these Boards with great distinction and integrity. And he spent really the last three decades serving his commonwealth, his community in a variety of different civic and charitable ways. He is currently Chairman of the McLean Project for the Arts.

He does have a stellar academic and professional background. He went to Duke University, an undergraduate school; went to law school at the College of William and Mary, where Mr. Jefferson, Thomas Jefferson, studied law. He seems to have similar philosophy as Mr. Jefferson.

After law school he began practicing telecommunications law. He served as outside counsel to numerous technology and telecom companies and trade associations.

He is admitted to the Virginia state bar. He's admitted to practice before the Supreme Court of the United States of America, the Supreme Court of Virginia, the U.S. Court of Appeals for the District of Columbia Circuit, the 1st Circuit, 4th Circuit and 5th Circuit and the U.S. District Court for the Eastern District of Virginia; a very competent lawyer.

I can personally attest to his high, exemplary character. And I think he's going to execute his duties as Commissioner with great ethics, with objectivity and the utmost of professionalism.

And I think he'll be striving—and you'll read his statement, you'll hear it—but I think he'll be striving to make sure that all people in this country have the opportunity to benefit from the digital revolution.

I think he'll be devoted and a very pragmatic Commissioner in the finest and fairest caliber with his knowledge and his experience.

I'm speaking for myself, but I know I'm also speaking on behalf of my colleagues from Virginia Senator John Warner, Congressman Tom Davis, Congressman Wolf and other members of the Virginia delegation in enthusiastically supporting the confirmation of President Bush's nomination of Rob McDowell on the Federal Communications Commission.

I'd like to put this as part of the record. And if I could, may I ask the first question of the witness, Mr. Chairman, because I was supposed to have left 10 minutes ago, but if I could ask a question, the first question if it please the court to ask the first question of the witness?

[Laughter].

STEVENS. If we say "no" will you stay?

[Laughter].

G. ALLEN. No, I'd have to go.

STEVENS. OK. Go ahead.

G. ALLEN. Thank you.

Rob, this is something I think that needs to be addressed. In my statement, all the experience you've had in the last 16 years, you have been an advocate for telecom entrepreneurs, for technology entrepreneurs and you have substantive experience in the private sector. And I think that's going to be extremely valuable to the FCC to have that perspective. And you may have more experience than any other of the Commissioners as well in these areas.

But I do think it's fair to ask you how you think you'll be able to adjudicate matters objectively and fairly given your background. And I think it's very important that you address this point.

MCDOWELL. Thank you, Senator Allen.

And thank you, Mr. Chairman.

G. ALLEN. You're going to have to give your statement. This I know fouls everything up, but . . .

MCDOWELL. Should I answer the question first?

STEVENS. Yes.

MCDOWELL. OK. Excellent.

It is a very sobering experience to have the President of the United States extend his hand and ask you to serve your country.

The President is asking me to be a fair, judicious, impartial, thorough and thoughtful adjudicator, arbiter and policymaker. And if confirmed, that is what I would strive with every fiber to be.

The role of an FCC Commissioner, of course, is very different from the role I've had throughout my career except for when I worked in the Virginia House of Delegates for your colleague Bob Andrews.

I've been an advocate and I've been an advocate on behalf of clients and I'd like to think I've been an effective advocate. And perhaps some of my former opponents should be quizzed as to how effective I may have been at times.

But many of the major issues I've worked on have been resolved. And more importantly, it would be my duty as a Commissioner to wipe the slate clean, to start from scratch and examine each issue *de novo*. I will prejudice nothing and I ask that my ability to be impartial not be prejudged.

At the same time, on top of all that, the FCC has a system in place that governs conflicts and recusals. Throughout this nomination process, I've been in consultation with the White House Counsel's Office, the Office of Government Ethics and, of course, the FCC's General Counsel's Office.

And there are standards in place. This is nothing new. This is not a case of first impression.

In fact, we recently had a Commissioner serve on the Commission who came straight from a regulated company, a specific company, just representing an industry in general, who served with great distinction. And I believe that Commissioner, when all was said and done, was only recused from two different proceedings.

So throughout my tenure at the FCC, if confirmed, I will rely on the advice and counsel and opinions of the FCC's Office of General Counsel and we will use the system and the process that's already in place.

G. ALLEN. Thank you, Mr. Chairman.

STEVENS. Thank you, sir. Have a nice weekend.

[Laughter].

Mr. McDowell, we'd be pleased if you'd proceed with your statement. It will print in full in the record, but if you wish to summarize it you may.

MCDOWELL. Thank you, Mr. Chairman, and members of the Committee. It is a great privilege to be able to appear before you here today.

I would, if I could indulge the Chairman, like to introduce some family members.

STEVENS. I thought the Senator did that. Please do, though.

MCDOWELL. Absolutely.

First, the wind in my sails, my beautiful bride, Jennifer. And I could not get to this point without her love and support and I appreciate everything she's done.

Next to her is my beautiful daughter who wants you to know that today she is 4 years and 5 months old today . . .

[Laughter].

. . . Mary Shea Virginia McDowell (ph).

Next to her is Griffin Malcolm McDowell (ph), who is 6 years and 8 months almost.

Next to him is my beautiful sister, Tina, who does not want me to reveal her age because she's a brown belt in karate; my father, Bart McDowell, whose age I will also not reveal, who, by the way, was raised on a ranch on the Tex-Mex border, I'd like to note, without phone service and went on to be a naval officer in World War II, then onto a distinguished career as a Senior Editor of *National Geographic Magazine*.

We are without my mom today, who just passed away last July and, of course, is unable to witness this day at least from an earthly perspective.

I have two brothers. My oldest brother, Kelly McDowell, is the Mayor of El Segundo, California. And if you've ever flown into Los Angeles Airport, you've flown into my brother's town. And my other brother, Josh, who's on the staff of Texas A&M on the Corpus Christi campus.

I'd also like to thank Commissioner Jonathan Adelstein for appearing today. And it's terrific to have you here.

I got to know him a bit when he was with Senator Daschle. And I appreciate the bipartisan support and hopefully we can reciprocate.

I'm deeply honored by President Bush's decision to nominate me to serve as a Commissioner of the Federal Communications Commission. Over the past few weeks, I've had the pleasure of meeting with many members of the Committee. And I thank all of you for taking the time out of your busy schedules to share your thoughts about communications policy and the FCC with me. And if confirmed, I look forward to continuing our dialogue.

But this coming October 19, in Virginia, we will commemorate the 225th anniversary of the American's victory over the British at Yorktown. And this battle effectively ended the war where a ragtag band of freedom fighters defeated the largest superpower in the world.

On that crisp, autumn day, as the vanquished British troops withdrew from the battlefield, they marched to the tune of "The World Turned Upside Down." And for the British, the old world had been turned upside down. But for freedom and democracy, the new world had been turned right side up.

George Washington and his fellow patriots won largely because of their belief that the dissemination of self-evident truths could shatter the walls of tyranny. They laid the foundation of a new nation built upon the twin cornerstones of free markets and free ideas for all.

At the heart of the ideals of the fledgling United States was a profound commitment to the freedom of speech, the freedom to communicate. No agency has more of an effect on the preservation and promotion of this freedom than the Federal Communications Commission.

If confirmed, I solemnly pledge to be true to those founding principles, to work tirelessly to promote free markets and the free expression of ideas.

With the advent of new technologies, the old world of communications has been turned upside down. But these advances have turned the new world right side up for freedom, democracy and capitalism.

Long ago, Thomas Jefferson envisioned the benefits brought forth by the free flow of information when he wrote, quote, "Enlighten the people, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day," end quote.

Jefferson's words were nearly prophetic in predicting the digital revolution. Today, American consumers are more empowered with information than ever before, thanks to brave and brilliant entrepreneurs, increased competition and less government regulation. But there is more to do.

If confirmed, I will commit myself to promoting competition and investments in all markets, clearing the cumbersome underbrush of unnecessary government regulation, encouraging private-sector solutions to many of the challenges facing the communications industry and removing barriers to entry.

All Americans should be able to benefit from the digital revolution and the FCC should strive to help American consumers realize that goal.

If confirmed, as Senator Allen pointed out, I will bring to the Commission nearly 16 years of private-sector experience in the communications industry and, with your approval, I will also bring with me a strong passion for bipartisan public service.

In my career, in addition to counseling technology entrepreneurs, I have served as a Legislative Aide to a member of the Virginia General Assembly, actively worked on bipartisan statutory boards as appointed by two Virginia Governors, and led efforts to make my community a better place to live, work and raise a family.

If confirmed, I will use this experience to help me approach each issue that comes before the Commission with energy, impartiality and thoughtfulness. I will endeavor to keep the spirit of Yorktown alive by working every day toward enhancing the lives and liberty of all Americans.

So let me just take a quick second to state my opinion about the four current Commissioners of the FCC.

STEVENS. Mr. McDowell, I think that the Senator has to leave. If you don't mind, he wants to ask you a question.

MCDOWELL. Fire away, Senator.

DORGAN. I'd be content for him to finish.

I didn't want to have to leave at 4 o'clock without saying that I support Robert McDowell's nomination. I think the President has sent us a nomination that is a solid nomination of someone well qualified.

But I wanted to say I had a chance to meet with Mr. McDowell.

Mr. Chairman, I think this Commission now with a full complement of Commissioners will be making decisions that will have a profound impact on what the

American people see, hear and read in the coming years, because they're going to be confronted with this issue of ownership limits. And there's not much important in my judgment in our government than getting this right.

The Commission has sunk its teeth into it before, been thwarted by the courts and thwarted by the Congress. And many of us have a profound concern about what might or might not happen here.

I'm not going to ask specific questions about it because we had a long talk in my office about that. But concentration in ownership of the media, including television, radio and the proposals for the cross-ownerships of newspapers—it's a very serious issue, because it will have a significant impact on what people in this democracy can see, hear and read, what information they get. And the foundation for democratic self-government is basic information to the American people.

So I did come because I wanted to say that I had a long conversation with Mr. McDowell. I think the President has made a good choice. And I'm really especially pleased: We're finally going to have an FCC with all five members seated, present and willing to debate and vote on issues. That's very important for this country.

So, Mr. McDowell, thank you. I wish you well. I look forward to working with you.

Mr. Chairman, thank you for the courtesy.

STEVENS. Thank you, Senator.

MCDOWELL. Thank you, Senator.

STEVENS. Finish your statement; we'll put it in the record so you complete it without any interruption.

MCDOWELL. Yes, sir. We're almost done.

But I just wanted to say that the four current Commissioners, as led by Chairman Martin, are, in my opinion, among the most talented and thoughtful people to have ever served in the FCC. And if confirmed, I'd be honored and humbled to join them.

And that concludes my brief statement. I'm looking forward to any questions you might have.

STEVENS. Well, thank you very much.

I was going to note the presence of Commissioner Adelstein. He does attend these hearings. And we welcome his participation, silently, however.

[Laughter].

We held some hearings, Mr. McDowell, that were targeted about universal service and we've been working on general rural telecommunications issues. Do you have any statements you'd like to make about your vision concerning how the FCC can keep rural America connected to this digital revolution?

MCDOWELL. Senator Stevens, that will be a major priority for me.

My father, as I mentioned before, was raised on a ranch on the Tex-Mex border. And he used to tell stories and still does about how my grandfather would take the car battery out of the car every night, because not only did they not have phone service, they did not have electricity, which was not unusual in that time, and to stay connected to the rest of the world, they would hook the car battery up to the radio inside the house.

Despite that, he went on to become a Senior Editor of *National Geographic*, but other folks didn't have the same opportunities perhaps that he had.

So keeping rural America connected is very real, very front and center for the McDowells.

What we have to, of course, focus on is the shrinking pool to the contribution mechanism and work on shoring that up and moving forward to strengthen that system, and making sure that folks who live on tribal lands or in rural America or in high-cost areas, poor inner cities, et cetera, have the same opportunity to access the information offered by others in more fortunate areas.

So as the Commission examines universal service, I will be making that a priority.

STEVENS. Thank you very much.

Senator Smith was not able to be here, but he sent a question and asked me to put it to you. His question is this: "For those of us in Oregon have been trying to attract a baseball team for years, we're envious of the spans (ph) in cities that actually have a team.

"I am, however, becoming more concerned about a tactic that cable companies are using to limit viewership of local sports programming. First Cablevision stopped broadcasting of Yankee games until they got a deal they wanted and then Comcast did the same did with the Philadelphia Phillies and in Washington, D.C., with the Nationals."

This is Senator Smith's question, "I understand the business negotiations can be tough, but blocking game broadcasts raise real concerns. How would you address situations like this from your position in the FCC?"

MCDOWELL. Well, Senator, that's an important issue and it's a personal one to us. We'd like to see some National games here locally. We're certainly supporters of our local team.

Coming from the private sector, I will first look to private-sector solutions to resolve issues such as that and I would prefer to see voluntary agreements between the parties at hand.

There may be ongoing proceedings or future proceedings at the Commission that could examine this. I'm not exactly sure of the Commission's authority in those areas under Title VI, Section 628, for instance. I'd have to take a closer look at that.

But the first line of defense, I think, should be a private-sector solution. If the Commission can encourage a private-sector solution, I would look for such an avenue.

STEVENS. As I mentioned, we welcome Commissioner Adelstein to be with us today, but if you are already confirmed you both couldn't be here.

Are you familiar with some of the rules that have been adopted in the past concerning the activities of the Commission? Are you familiar with that rule, particularly about how many Commissioners can be present at any one time at a public gathering?

MCDOWELL. I'm roughly familiar with that. I think the answer might be two of us, but I can double-check that.

STEVENS. Some of us are very disturbed about that too. I think we need some opinions on the Commission about what should be done to modernize your procedures so that you can function as a modern body.

There was a time in the past when Senator Goldwater and I decided that there were too many Commissioners and we asked the Congress to delete two. Did you know that? That was the problem we had to get an agreement among the seven.

You said you will be bipartisan. Can you tell us a little bit more about that, about your attitude about bipartisanship?

MCDOWELL. Well, Senator, throughout my career I've learned that these issues are not necessarily, for the most part, partisan issues.

I have worked in a bipartisan manner as an advocate, and would continue to take that spirit to the Commission with me if confirmed.

I've served on statutory boards appointed by two Governors of Virginia that were bipartisan and worked well with folks of the other party, again, on issues that are historically not necessarily been partisan issues, for the most part.

So I am looking forward to that. There's not a partisan gigabyte. There's not a partisan megahertz. So I don't anticipate looking at those issues through a partisan lens.

STEVENS. You've had a substantial relationship with some of the communications interests and I note in your statement that you indicate that you do intend to very jealously apply the conflict of interest concepts and will disqualify yourself in any matter than you've had connection with before or any entity you've had before.

Can you elaborate on that a little bit?

MCDOWELL. Well, I will certainly rely on the opinion of the Office of the General Counsel of the FCC and they do have a system in place and rules in place.

Conflicts at the FCC are not necessarily anything new. We have a Commissioner recently who came from the private sector, from a regulated company, who ended up only being recused from two particular matters, as I recall.

So I will consult with the Office of General Counsel on any matter where Comptel may have been a party or where Comptel's members may have been a party to make sure that there's not even the appearance of a conflict of interest.

STEVENS. Have you made an appearance before the FCC as an advocate?

MCDOWELL. Not in several years, Mr. Chairman.

My primary bailiwick at Comptel for the past 6 or 7 years has been the legislative and executive branch. We have other folks at Comptel who worked the FCC for the most part. And my name has not appeared on a pleading in several years, nor have I been formulating or writing pleadings or been substantially involved in any pleadings before the Commission.

STEVENS. Well, I don't know whether other members have questions they wish to submit. If they do, I would urge you to respond to them as rapidly as possible because we will also try to get this nomination on the Executive Session agenda for March 16.

Thank you very much and we thank your family for coming to join us.

MCDOWELL. Thank you, Mr. Chairman.

## EXHIBIT D—MARTIN LETTER TO CONGRESSIONAL LEADERS

FEDERAL COMMUNICATIONS COMMISSION  
*Washington, DC, December 1, 2006*

Hon. TED STEVENS,  
 Chairman,  
 Committee on Commerce, Science, and  
 Transportation,  
 U.S. Senate,  
 Washington, DC.

Hon. DANIEL K. INOUE,  
 Co-Chairman,  
 Committee on Commerce, Science, and  
 Transportation,  
 U.S. Senate,  
 Washington, DC.

Hon. JOE BARTON,  
 Chairman,  
 Committee on Energy and Commerce,  
 U.S. House of Representatives,  
 Washington, DC.

Hon. JOHN D. DINGELL,  
 Ranking Member,  
 Committee on Energy and Commerce,  
 U.S. House of Representatives,  
 Washington, DC.

Hon. FRED UPTON,  
 Chairman,  
 Subcommittee on Telecommunications  
 and the Internet,  
 Committee on Energy and Commerce,  
 U.S. House of Representatives,  
 Washington, DC.

Hon. EDWARD J. MARKEY,  
 Ranking Member,  
 Subcommittee on Telecommunications  
 and the Internet,  
 Committee on Energy and Commerce,  
 U.S. House of Representatives,  
 Washington, DC.

Dear Sirs:

As you know, in March of this year, AT&T and BellSouth filed applications for transfer of control with the Commission pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, and section 2 of the Cable Landing License Act. Generally, the Commission attempts to rule on mergers within 180 days. This merger filing has now been pending before the Commission for over 8 months. Last year the Commission ruled on two large wireline mergers, the AT&T/SBC and Verizon/MCI transaction, by day 199 of the Commission's calendar. In an attempt to rule on the AT&T/BellSouth transaction in a similar fashion, I circulated a draft order to my colleagues on September 21, 2006—several weeks in advance of the Commission's 180-day mark.

We were originally scheduled to vote on this merger item at the Commission's open agenda meeting scheduled for October 12. We then rescheduled this meeting for the next day, October 13th to give my colleagues additional time. On the morning of October 13, Commissioners Copps and Adelstein, in a written letter, requested additional time to consider the transaction. Specifically, they requested that there be another round of public comment. I agreed to this request and deleted the items from consideration from the October 12 meeting and opened up a new comment period. At the conclusion of this comment period, I once again scheduled a vote on the merger order at the Commission's November 3 open agenda meeting. Unfortunately, it became clear on the eve of that meeting that there was still no consensus. I again deleted this item from the Commission's agenda. Since that time, the merger has remained on circulation for consideration by the Commission and I have continued to work with my colleagues in an effort to address the concerns they have expressed about the transaction.

It now appears that, despite working for months to reach consensus with my colleagues, three attempts over the past 6 weeks to have this item considered at an open meeting, and countless hours of internal deliberations, the Commission has reached an impasse. Although Commissioner McDowell is currently not participating in this proceeding, the FCC's general counsel "may authorize [him] to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. §2635.502(d). The General Counsel has, in the past, used this authority to authorize Commissioners to participate in matters in which they would otherwise be recused. For example, in September 2000, the General Counsel authorized then-Chairman Kennard to break a two-two deadlock in a proceeding addressing the repeal or modification of the personal attack and political editorial rules, despite the fact that Chairman Kennard had previously represented NAB in that proceeding. Given the Commission's inability to reach consensus on this matter, I have asked the General Counsel to consider whether the



Government's interest would be served by permitting Commissioner McDowell—who has not participated in this proceeding thus far—to participate.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

KEVIN J. MARTIN,  
*Chairman.*

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EXHIBIT E—AUTHORIZATION MEMO

**United States Government—Memorandum**

*Office of the General Counsel*

DATE: December 8, 2006

TO: Commissioner Robert McDowell

FROM: Samuel L. Feder

General Counsel

SUBJECT: Authorization To Participate in the AT&T/BellSouth Merger Proceeding

In accordance with the provisions of 5 C.F.R. § 2635.502(d), you are hereby authorized to participate in the Commission's decision on the AT&T/BellSouth merger proceeding described below. To date, you have not participated in this proceeding because you were, until May 31, 2006, employed by the Competitive Telecommunications Association (CompTel), which is one of a number of parties that have opposed the merger. You are now free to participate if you choose to do so.

Section 2635.502(d) provides that where an employee's participation in a particular matter involving specific parties would raise a question in the mind of a reasonable person about his impartiality, the agency designee (in this case, the General Counsel of the FCC)<sup>1</sup> may authorize the employee to participate in the matter based on a determination that "the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d).

Balancing these competing concerns here was difficult, and reasonable people looking at these facts could disagree about the appropriate result. However, on balance, as explained below, I find that you should not be barred from participating in this proceeding if you choose to do so. My decision is guided by FCC precedent, in which then-Chairman Kennard was authorized to take part in a proceeding addressing the repeal or modification of the personal attack and political editorial rules, despite the fact that he had previously represented a party in that same proceeding. I find any appearance concerns in that case to be greater than the potential appearance concerns here: Chairman Kennard previously participated as an advocate in the very same proceeding, while you never participated in any way in this proceeding on behalf of CompTel. And I find the Government's interest in your participation here to be at least as strong as the Government's interest in Chairman Kennard's case.

Regardless of this precedent, however, you are free as an FCC Commissioner to abstain from participating in and voting on any proceeding. This authorization thus allows you to make your own decision. If you feel appearance concerns outweigh the Government's interest here or you have any other reason to abstain from participating, you are free to do so.

**Background**

On March 31, 2006, AT&T and BellSouth, in order to effectuate the merger between the two companies, filed applications for transfer of control with the Commission pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, and Section 2 of the Cable Landing License Act. On April 19, 2006, the Commission issued a Public Notice seeking comment on these applications. The comment period closed on June 20, 2006. Numerous parties have participated in this proceeding, either supporting the applications, opposing them, or seeking conditions on their approval. CompTel has opposed the applications and/or sought conditions on their approval. Although you served as Senior Vice President and Assistant General Counsel of CompTel before you joined the Commission on June 1, 2006, during your tenure at CompTel, you did not have responsibility for this proceeding and did not participate in the matter.

Generally, the Commission attempts to rule on mergers within 180 days from the time the merger application is placed on public notice. However, this merger has now been pending before the Commission for nearly 8 months. The Department of

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<sup>1</sup>See 47 C.F.R. § 0.251(a).

Justice approved the transaction with no conditions on October 11, 2006, and all relevant state regulators have approved the transaction.

Last year, the Commission ruled on two large wireline mergers, the AT&T/SBC and Verizon/MCI transactions, within 200 days. In an attempt to rule on the AT&T/BellSouth transaction in a similar fashion, a draft order was circulated on September 21, 2006, among the four Commissioners currently participating in this proceeding—several weeks in advance of the Commission’s 180-day target. The Commission was originally scheduled to vote on the merger item at its open agenda meeting scheduled for October 12, 2006. The day before that meeting, the item was removed from the agenda to give Commissioners additional time to reach a consensus, and a new meeting to consider the merger was scheduled for October 13, 2006. On the morning of October 13, 2006, however, two Commissioners requested additional time to consider the transaction and asked that there be another round of public comment on proposals that had been made for achieving consensus. In response, the scheduled October 13 meeting was canceled, and a new comment period was opened.

At the conclusion of this second public comment period, a vote on the merger item was scheduled for the Commission’s November 3, 2006, open agenda meeting. However, when it became clear on the eve of that meeting that the Commissioners were still unable to reach consensus, this item was deleted from the Commission’s agenda, thus delaying action on the merger for the third time. Since early November, the merger has remained on circulation for consideration by the Commission but no action has been taken. Based on the facts available to me, it is now apparent that the Commission has reached an impasse in its consideration of the merger. The four Commissioners currently participating in the proceeding have reached a deadlock, and there are not sufficient votes at this point to take any action whatsoever with respect to the merger.

#### **Discussion**

Section 2635.502 provides that, absent authorization by the General Counsel, an employee generally should not participate in a particular matter involving specific parties if the employee worked for a party to the proceeding within the last year and the circumstances would raise a question in the mind of a reasonable person about the employee’s impartiality. *See* 5 C.F.R. § 2635.502(a). Where applicable, this provision “does not constitute a ‘bar.’” Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch, 57 Fed. Reg. 35006, 35027 (Aug. 7, 1992). Rather, Section 2635.502(d) provides that I may authorize participation in the matter based on a determination that “the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” This regulation “was intended to provide agencies with a ‘flexible standard’ and ‘broad discretion,’ rather than an inflexible prohibition that might unreasonably interfere with agency operations.” OGE Informal Advisory Letter 01 x 5, at 2 (citing 56 Fed. Reg. 33778, 33786 (July 23, 1991)).

As noted above, CompTel is one of a number of parties that have opposed the merger and/or sought conditions on its approval. For purposes of this authorization, I therefore assume, in light of your prior employment at CompTel, that your participation in this matter might raise some concerns about your impartiality.

At the same time, however, the Government has a significant interest in reaching a decision on the license transfers at issue here. The FCC has the responsibility under Sections 214 and 310 of the Communications Act to review whether the transfers of licenses in connection with a merger are in the public interest. *See* 47 U.S.C. §§ 214, 310. Moreover, the Commission has the obligation to issue a written decision after completing its review, so that aggrieved parties may seek judicial review of the Commission’s actions. *See Getty v. Federal Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986).

It is also the Commission’s policy to complete its review process as expeditiously as possible consistent with the Commission’s regulatory responsibilities. Since 2000, the Commission has generally attempted to rule on license transfers incident to mergers within 180 days from the time the application is placed on public notice. Then-Chairman Kennard explained in initiating this policy: “The goal will be to complete even the most difficult transactions within 180 days after the parties have filed all the necessary information and public notice of the petitions has been issued.” Statement of Chairman William E. Kennard Before the U.S. Senate Committee on Commerce, Science, and Transportation On Mergers in the Telecommunications Industry (Nov. 8, 1999); *see also* FCC News Release, *FCC Implements Predictable, Transparent and Streamlined Merger Review Process* (Jan. 12, 2000). This policy is part of an effort to “ensure that the process of reviewing applications and

requests associated with all transactions, including mergers, is predictable, transparent, and swift” Public Notice, *Public Forum, Streamlining FCC Review of Applications Relating to Mergers* (Feb. 18, 2000). Regardless whether a merger is ultimately approved or rejected, taking predictable, transparent, and swift action on mergers is important to minimize regulatory uncertainty, which limits investment and impedes deployment of infrastructure for broadband and other new services. For large transactions such as this one, a delay in making a decision can have a significant impact throughout the industry. *See, e.g.*, Letter from Jeffrey A. Campbell, Director, Technology and Trade Policy, Cisco Systems, Inc. (Dec. 8, 2006) (“Although Cisco has not participated in this proceeding to date, we wish to draw the Commission’s attention to the negative impact on network investment that the lengthy delay in the Commission’s process has caused.”); “AT&T, BellSouth merger wait vexes vendors,” *TELEPHONYonline* (Nov. 27, 2006) (“[T]he wait is generating anxiety among equipment vendors that supply the two carriers. . . . [P]urchasing decisions could be delayed, and a general uncertainty over future network plans leaves vendors in the dark.”). To be clear, the relevant interest of the Government is not in reaching any *particular* result with respect to the merger, but in promptly reaching a decision either way. Here, all other relevant government agencies—the Department of Justice and the appropriate state regulators—have already done so.

In balancing the Government’s interest against the concern that a reasonable person may question the integrity of the agency’s programs and operations, Section 2635.502(d) sets forth factors which “may be taken into consideration.” 5 C.F.R. § 2635.502(d). These factors include, but are not limited to: (1) the nature of the relationship involved; (2) the effect that resolution of the matter would have upon the financial interests of the person involved in the relationship; (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter; (4) the sensitivity of the matter; (5) the difficulty of reassigning the matter to another employee; and (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

After carefully examining these factors as well as other relevant factors, I have determined for the reasons set forth below that you should be allowed to participate in this merger proceeding.

The most important factor here is the difficulty of reassigning this matter to another employee. In this case, because a Commissioner may not delegate his or her vote to anyone else, it would be impossible to reassign the matter to another employee. For the same reason, there are no “adjustments that may be made” to your duties that would alter the analysis here. Therefore, you are the only person available to break the impasse that has been reached in this proceeding.

In addition, while, as stated above, CompTel’s participation in this proceeding might raise some concerns about your impartiality, those concerns are mitigated here for several reasons. To begin with, looking at the nature of the relationship involved and at the effect that resolution of the matter would have upon the financial interests of the person involved in the relationship, you did not participate in this matter in any way while working at CompTel. You also have no continuing relationship with your former employer. Moreover, neither of the parties to this proposed merger, AT&T and BellSouth, is a member of CompTel, and CompTel does not itself have a direct financial stake in the Commission’s decision. In addition, the Commission’s decision will have no impact whatsoever on your financial interests as you have divested all financial interests in entities regulated by the Commission pursuant to Section 4(b)(2) of the Communications Act, 47 U.S.C. § 154(b)(2). Furthermore, no member of your immediate family has any financial interest in entities regulated by the Commission.

Other relevant factors here are the nature and importance of your role in this matter, as well as the sensitivity of the matter. Applying those factors, your role as a decision-maker in this proceeding would be extremely important, you would be called upon to exercise discretion in that role, and it is safe to assume that this matter is sensitive. To be sure, each of these factors could reasonably be seen as heightening concerns about your participation in this proceeding. However, more significantly, these factors also amplify the Government’s interest in your participation. As reviewed above, as a Commissioner, your decision-making role cannot be delegated to any other employee of the Commission. Moreover, given the impasse

reached in this proceeding, the Government has a strong interest in having you participate.<sup>2</sup>

Importantly, authorizing your participation here is guided by precedent. In September 2000, the General Counsel of the Commission determined that it would be permissible for then-Chairman Kennard to participate in the proceeding on the repeal or modification of the personal attack and political editorial rules despite the fact that Chairman Kennard had previously represented—and co-signed two pleadings on behalf of the National Association of Broadcasters (NAB) in that proceeding. *See also, e.g., Barker v. Secretary of State's Office of Missouri*, 752 S.W. 2d 437 (Mo. App. W.D. 1988) (holding that the third member of the Missouri Labor and Industrial Relations Commission could vote and break a 1–1 deadlock on a worker's compensation claim even though she had previously served as counsel for the employer and the insurer in the same proceeding).

I find any potential appearance concerns here to be less than those at issue in Chairman Kennard's case. Chairman Kennard had personally participated as an advocate in the relevant proceeding prior to coming to the Commission, whereas you never participated in this merger proceeding on behalf of CompTel. Although Chairman Kennard had left NAB some years before voting on the proceeding at the FCC, in the end he was voting on pleadings he had participated in and signed. "Virtually all states and the Federal Government . . . require a judge's disqualification if he or she has acted as a lawyer in the *same* lawsuit or controversy." *Mustafoski v. State*, 867 P.2d 824, 832 (Alaska Ct. App. 1994) (emphasis in original). However, "the prevalent American rule of disqualification is limited to instances in which the judge participated as a lawyer in an earlier stage of the same case." *Id.*

In addition, another important factor that mitigated appearance concerns in Chairman Kennard's case is equally present here. Specifically, the parties opposed to the position of Chairman Kennard's former employer supported his involvement in the proceeding, and Chairman Kennard relied on that fact as a basis for his participation: "In addition, the parties opposing the broadcasters, who would be the parties most likely to question my impartiality since the issue arises because I previously worked for the NAB, have made clear that they believe I should participate." *Statement of FCC Chairman William E. Kennard Concerning his Participation in the Personal Attack and Political Editorial Rule Proceeding* (Sept. 18, 2000). The current proceeding is in exactly the same posture. AT&T and BellSouth have made clear that they believe you should participate in the proceeding despite your prior employment by CompTel, which has opposed their merger.

At the same time, the Government's interest in your participation here is at least as strong as, if not stronger than, the Government's interest in Chairman Kennard's participation in the proceeding on the repeal of the personal attack and political editorial rules. In that case, at the time the General Counsel issued his authorization, Chairman Kennard's participation was not necessary for the proceeding to move forward. At that point, the case had been remanded to the Commission by the D.C. Circuit, *see Radio-Television News Directors Association v. FCC*, 184 F.3d 872, 885, 889 (D.C. Cir. 1999), and the Court had "instructed" the two members of the Commission opposing repeal of the rules "to explain [their] support of the personal attack and political editorial rules in light of the Commission's conclusion in 1985 that the fairness doctrine was not in the public interest and its decision in 1987 not to enforce the fairness doctrine." *Radio-Television News Directors Association v. FCC*, 229 F.3d 269, 270 (D.C. Cir. 2000). However, rather than provide the justification requested by the D.C. Circuit, the Commission on remand voted by a 3–2 margin, with Chairman Kennard's participation, to suspend the personal attack and political editorial rules for 60 days and to request parties to provide evidence to assist the Commission in reviewing the rules within 60 days of their reinstatement. Responding to the Commission's action, the D.C. Circuit held that it "[c]learly . . . [was] not responsive to the court's remand" because the Commission had still failed to provide an adequate justification for the rules. *Id.* at 271. As a result, the D.C. Circuit ordered the Commission "immediately to repeal the personal attack and political editorial rules." *Id.* at 272.

To be sure, this discussion is not intended to imply that the Government lacked a strong interest in Chairman Kennard's participation in the personal attack and

<sup>2</sup>It is worth emphasizing that the question addressed in this authorization could not be avoided simply by waiting to vote on the merger until 1 year elapses from your prior employment at CompTel. Given the circumstances of this particular merger, I do not believe that any appearance concerns here would change materially in 6 months. And Section 2635.502 requires an authorization for an employee to participate at any time where circumstances might "raise a question regarding his impartiality." *See* 5 C.F.R. § 2635.502(a)(2). Meanwhile, as discussed above, the Government has a significant interest in resolving this proceeding in a prompt manner.

political editorial proceeding. Clearly, his recusal significantly restricted the Commission's flexibility in moving forward in that proceeding. Nevertheless, the fact remains that the Commission could have responded to the court's remand in that proceeding by having the two Commissioners opposed to the repeal of the rules (Commissioners Ness and Tristani) provide the explanation of their position requested by the court.

In this case, by contrast, there is currently no way to move forward here absent your participation because a three-member majority is necessary for the Commission to take any action whatsoever on the merger. The Commission must either vote to grant the application (47 U.S.C. § 309(a)), or it must vote to "formally designate the application for hearing . . . , specifying with particularity the matters and things in issue" (47 U.S.C. § 309(e)). Thus, while the deadlock in Chairman Kennard's case persisted for a longer period of time than has the deadlock in this proceeding, the need for a Commissioner to break the deadlock is demonstrably greater here. And here the Government has a policy of completing its review process as expeditiously as possible consistent with its statutory responsibilities. Accordingly, I find that the Government interest here is at least as strong as that in Chairman Kennard's case, if not stronger.

I acknowledge that the decision as to whether to grant this authorization is a difficult one, and reasonable people looking at these facts could disagree about the appropriate result. In making this decision, I therefore consulted with senior officials at the Office of Government Ethics (OGE), including Director Robert I. Cusick. After discussion of the issues, Director Cusick agreed that the ultimate decision on the granting of an authorization was totally within the FCC's discretion, that, in his view, the decision was a "very, very close call" on which reasonable persons could differ, and that he would not criticize anyone for coming down on the side of an authorization. While he indicated that, were the decision up to him, he would decide against authorization, he agreed that the FCC could reasonably come out the other way. As OGE has stated, "the determinations contemplated by § 2635.502(d) necessarily call for the agency designee's exercise of judgment and not the application of precise standards from which only one correct conclusion can be reached." Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch, 57 Fed. Reg. 35006, 35027 (Aug. 7, 1992). As the agency designee, I have direct experience with the Government's interest here, the current status of the Commission's consideration of the merger, the appearance concerns in the context of this particular merger proceeding, and the agency's precedent in these matters. I also recognize that as an FCC Commissioner, you are often called upon to make decisions in rulemakings involving telecommunications issues that directly impact many of the same parties participating in this merger proceeding. For example, in June, you voted in the Universal Service Fund Contribution Methodology proceeding, in which CompTel, AT&T, and BellSouth each filed comments. And it is in light of this experience, for the reasons set forth above, that I have determined that you should not be prohibited from participating here.

Finally, particularly given the difficult nature of this decision, I wish to make clear that my authorizing you to participate in the merger proceeding in no way compels you to do so. An FCC Commissioner nominated by the President and confirmed by the Senate is always free to abstain from participating in and voting on a proceeding, and there is no impediment to your exercising that prerogative here. This authorization thus allows you to make your own decision.

#### **Conclusion**

In sum, the factors set forth in 5 C.F.R. 2635.502(d) as well as other relevant factors weigh in favor of allowing you to participate in the merger proceeding if you so choose. You are, therefore, authorized to participate under 5 C.F.R. 2635.502(d).

Senator PRYOR. Thank you, Commissioner McDowell.

What I will do now is turn it over to Senator Hutchison who has an appointment that she needs to get to. So Senator Hutchison?

Senator HUTCHISON. Well, yes, and I want to especially say good luck to Griffin. I am very impressed, and I am going to make this statement publicly. Tonight I am going to be watching the University of Texas Longhorns in the college world series, and I am asking you right now to consider going to the University of Texas and playing baseball because I know you have a future.

[Laughter.]

Senator HUTCHISON. So consider it a recruitment. Good luck tonight.

Mr. McDowell, I want to ask you a couple questions. First of all, on the fairness doctrine, that is something that is very important to many people. Reinstating it is something that everyone I know thinks would be a bad idea. I wanted to ask you if you see any signs of the Commission moving in that direction through the localism effort, and what is your view about what is going on.

Mr. MCDOWELL. First of all, Senator, I have spoken out for quite a while about my concerns about any reimposition of the doctrine. Some call it the "censorship doctrine." Others call it the "forced speech doctrine." So I just simply call it "the doctrine," in order to be fair. But I believe it probably is unconstitutional.

I do not have any concerns at the moment that the Commission will pursue it. I take Mr. Genachowski at his word that he will not pursue it. But there are some other concerns that I have regarding heaping more obligations on broadcasters, especially at this time, but in the future as well. The broadcast industry is really taking it on the chin right now due in part certainly to the recession. About a third of their advertising revenue comes from car dealerships alone, and of course, we all know the fate of car dealerships. There are more and more broadcast stations in distress these days, and then there is the whole aspect of all the new media competition I sort of outlined in my opening statement. The eyeballs, ears and ad dollars are going to new media, and I think we need to be mindful of that before we impose any new regulations.

Senator HUTCHISON. Thank you.

I would like to ask you the same question that I also posed to Mr. Genachowski regarding the media ownership rule, the newspaper, broadcast, television station, FCC parameters, and ask if you think that it is time to look at those restrictions in a new light. I said earlier that I have never liked having too much ownership in too few media outlets. I do not think it is healthy, but so much has changed in the last five years, as you stated in your opening statement, and I think perhaps now with newspapers in such dire straits, that lifting some of those restrictions and letting broadcast and newspaper owners have the capability to bring their revenue up so that they can both stay in business. And I would like to know how you feel about that.

Mr. MCDOWELL. Thank you, Senator. In December 2007, I voted for a relaxation of the newspaper-broadcast cross ownership ban, especially looking at the top 20 markets, but also looking at the below 20 markets, markets 21 and below, with different standards. Both standards would help preserve the diversity of voices, and I think that is really what our rules are all about to make sure there is competition among voices and a diversity of voices in a particular marketplace so that no one company or small group of companies could dominate the news and information or entertainment in a particular market.

But I think that our communications marketplace is awash with a plethora of choices for consumers. In fact, we are awash in so much information, the texting acronym is TMI, or too much information, sometimes. So I think we need to take that into account.

Of course, the order that we voted out in December 2007, is being litigated at the Third Circuit right now. It looks as though that court will freeze its review of that order until a new FCC is constituted, and until we move on with our next quadrennial review, which is scheduled to commence next year. So pragmatically speaking, I am not sure if anything will be done before the next review, but of course, the Chairman controls the agenda at the FCC, and that would be his prerogative to schedule that or not.

Senator HUTCHISON. The last question would be the net neutrality. How are you going to approach net neutrality?

Mr. McDOWELL. I think it is very healthy to have this debate, first of all. The concern is that there has primarily been a duopoly in the last mile for years in broadband, a cable company versus a telephone company. And the fear there has been maybe one of those companies could somehow control or both of them could control the content that flows over the “pipes,” as we call them in the vernacular.

I think the best way to resolve that is to ensure there is more competition in the last mile. And since I have been at the FCC, I have worked to do just that, to help create opportunities for the construction of new delivery platforms, be that through our video franchising order in December 2006, to make it easier for new entrants to get local franchising authority and lay new fiber and create new last-mile facilities that way—and that is not just incumbent phone companies, but it is also over-builders and new entrepreneurs as well—or whether it is through our 700 megahertz order where, hopefully, we will have up to six new entrants per market or six players per market to help mix things up. And then top that off with what we did to help open up the television white spaces to unlicensed use and our further work that we have ahead of us there. These decisions, I think, really help provide competitive safeguards.

So I think coming over the horizon—or the AWS-1 auction we had in 2006, and the list goes on—but coming over the horizon, I think we have a multitude of opportunities for competition in the last mile, and I think that will help be a check and a balance against anticompetitive conduct.

And last, I would hope that we can change the dialogue from merely discrimination—the word “discrimination” certainly has many negative contexts or meanings—but talk about “anticompetitive” conduct as well and the intent there.

So as we go forward, I look forward to working with this Committee and my fellow Commissioners on that issue, but I think what is best for consumers is competition.

Senator HUTCHISON. Well, thank you very much, and thank you, Mr. Chairman, for your deference. I appreciate it.

Senator PRYOR. You bet. Thank you.

Senator Thune?

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. I wish I could have been here for Mr. Genachowski when he was here. We had an Armed Services Subcommittee hearing on which I am the Ranking

Member, but I am glad to be able to welcome and congratulate Mr. McDowell on your reappointment.

I look forward to continuing to work with you upon your confirmation on a lot of issues, obviously, many of which have been touched on. National broadband policy, applying indecency regulations—net neutrality has been mentioned—spectrum allocation are just a few of the issues that confront the Commission today. I think the range of issues that you deal with, the importance of those issues cannot be overstated. So it is a very important position, and I hope that we can continue to make some progress on some of these things.

I would say and I understand that you have already had a lot of, I am sure, very lively discussion about the fairness doctrine, but I hope the Commission can put a stake through the heart of that thing once and for all. It will certainly reduce the number of amendments that we consider up here if we do not have to deal with the fairness doctrine amendments on appropriations bills.

But I do want to ask you about some of the national broadband policies because as you know, the FCC is required by the stimulus bill to develop a national broadband plan. I know that there are grants and loan guarantees in the stimulus bill, but I am just curious as to what your thoughts are about deploying broadband to rural areas of the country.

Mr. MCDOWELL. Well, I would hope the focus would be on unserved areas certainly first. Now, the FCC has an informal advisory role with the Department of Commerce and the Department of Agriculture who actually have the spending authority for that \$7 billion. The Commission will not be offering any advice in writing. It is very informal, primarily the Chairman and the career staff of the FCC working with the staff at Agriculture and Commerce on that. But I would hope our focus would first be on unserved America, and certainly in South Dakota I know there are a lot of areas that are still unserved.

We also have what will be now nearly an \$8 billion Universal Service Fund at the FCC, and that fund is growing despite a cap that we voted last year on the competitive eligible telecommunication carrier portion of that fund. That is a mouthful. CETC portion, as we call it. The contribution factor or the “tax” of sorts has grown to an all-time high of almost 13 percent. So that is something that we administer, and I think we need a full audit of that fund and how it is used as well as all FCC operations, by the way. But that would be part and parcel to any part of any broadband reform.

Senator THUNE. Well, and I know that the Universal Service Fund tends to generate a considerable amount of controversy. The only thing I guess I would ask of you is, as you take these issues on, that you take into consideration the impact on rural areas and making sure that rural areas and the frontier, so to speak, is not left behind. I think there are just some wonderful applications of technology that are leading to incredible increases in productivity and job creation and everything else in our economy, but it is, obviously, going to be very important in my view as we move forward, that we do it in a way that takes into consideration some of the



unique and particular needs that rural areas of the country have as well.

So I do not have any questions beyond that, Mr. Chairman. I want to congratulate Mr. McDowell, and as I said before, I look forward to working with you. As you know, I will be focusing in on some of those rural issues. So thank you and good luck.

Mr. MCDOWELL. Thank you, Senator Thune.

Senator PRYOR. Thank you, Senator Thune.

Let me dive in, if I may, with just a few brief questions, first about E-Rate. This is a provision in the 1996 Act that Senator Rockefeller and Senator Snowe worked on. It is one of the things that the Chairman is very proud of because of its effectiveness in closing the digital divide. When the Telecom Act of 1996 was passed, only 14 percent of the classrooms in the country and 5 percent of the classrooms in low-income communities had access to the Internet. Thanks to the E-Rate program, today more than 90 percent of all classrooms have access to the Internet.

The question would be, do you support the E-Rate program as it is currently laid out in the statute?

Mr. MCDOWELL. Yes, sir.

Senator PRYOR. And do you think that there should be any modifications, either changes or enhancements, to it, or do you think it ought to just stay as is?

Mr. MCDOWELL. Well, I have called for, early this year, a complete audit, like I said before, of all FCC operations, financial, operational, everything, and that would include E-Rate and the whole USAC administration of funds, not for any particular reason, but I think it should be done periodically. In the private sector, when you have a merger or acquisition of a company, you start with a due diligence review, and obviously now we have a new party in charge of Washington. So I think there should be due diligence reviews of the entities that are getting new leadership, and that should be part of it.

Senator PRYOR. Speaking of mergers and acquisitions, I know that is one of the things that the FCC does that is very important. When you look at a merger or acquisition in a given industry, there could literally be billions of dollars at stake and there is a lot of capital investment, and you need to consider that aspect of it. You also need to, obviously, look at the consumer and whether the consumer will benefit, but you also, I think, at least should look at the economic impact it will have on given communities because oftentimes when there is a merger or acquisition, one community is a big loser in that prospect.

So my question is just a general question, and that is, how do you balance all of those interests when you are looking at a merger or acquisition?

Mr. MCDOWELL. Under the statute, the FCC looks at mergers through what we call the public interest standard, and that is really our only hook. Again, that is a merger where there is a transfer of licenses. If there is no transfer of license, it does not come before us. So we have a different standard from what, let us say, the Department of Justice or the Federal Trade Commission might have. So the public interest standard is broad, but it is also within our core mission, obviously, that Congress set up in 1934.

So going forward, I like to look at mergers and any conditions that are placed on them, and I ask the question whether or not those conditions are merger-specific. Is there something that is coming out of the merger regarding maybe a competitive harm that is merger-specific? And we place conditions on that that are sort of narrowly tailored to those interests. So that is historically how I have approached merger reviews.

Sometimes a majority of the Commission might see it a different way, and they work out a different deal with the merging entities. Then the merging parties will come to me and say, please, just vote for this as is. So that is something to take into consideration as well.

Senator PRYOR. Let me just ask a practical scheduling question, and if you cannot answer this, it is OK. I am just curious.

Here you have, in all likelihood, a new Commissioner coming in, a new Chairman coming in. At some point soon—I do not know exactly when that nomination will come through the Senate, but it is our hope that we would move your nomination and his fairly quickly. But in the meantime, you do have some mergers pending with the Commission. I do not know what all they are, but I know that some of these entities would like to have some finality before the end of the business quarter. Are you all going to try to wait until a new person comes on board? Are you going to try to sort of clear the decks now so that the new person does not have to deal with that? Or have you all made a decision on that?

Mr. MCDOWELL. I actually do not know the answer to that question. That is really a determination of the Acting Chairman at this point. There is one particular merger, and I do not want to comment on the specifics of any mergers before us right now, but one specific merger that is slightly past its 180-day deadline. So I would hope that it would come sooner rather than later. I have been a long proponent of shot clocks and I would hope we could stick to our 6-month shot clock going forward on all mergers. But the sooner the better would be my preference.

Senator PRYOR. With that, I really do not have any other questions. I understand you have a baseball game you have to get to.

Mr. MCDOWELL. I will stay as long as you need me to.

Senator PRYOR. We are going to try to wrap this up, but I know that Senator Warner wanted to be here, but because of some schedule changes today in the Senate, he could not. But Senator Warner is a big proponent of yours, big supporter of yours, and he wanted to be here to introduce you.

Let me just remind all Senators and staff that we are going to try to have all written questions, follow-up questions in today by 6 o'clock. We would love you to try to turn those around.

As I understand it, between the two leaders on the Senate floor, there is no agreement yet on your nomination and the other FCC nomination, but I am sure that Chairman Rockefeller, Senator Hutchison, and others will try to get these packaged up and moved through as quickly as possible.

Let us see. I think that is it. Is there anything else we need?

With that, I just want to thank you for your service on the Commission so far and what you have added to the Commission and to

the process. If you get any questions, we would appreciate a very rapid turnaround. And good luck on the game tonight. Thank you.

Mr. MCDOWELL. Thank you so much, Senator.

Senator PRYOR. Adjourned.

[Whereupon, at 4:36 p.m., the hearing was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. CHUCK GRASSLEY, U.S. SENATOR FROM IOWA

Mr. Chairman, I appreciate the opportunity to address the Committee on a very important issue to my state of Iowa, access to advanced telecommunication services in rural America.

As the Committee is aware, many rural states, like my state of Iowa, rely on the Universal Service Fund. The USF assists telecommunication providers in bringing advanced services to rural areas where it is expensive to provide service. Under the current system, all rural carriers seem to be treated the same when it comes to eligibility to receive distributions from the USF. However, it can be argued that not all rural carriers are the same. There are examples where some carriers, which have purchased historically under-invested networks from the Nation's largest carriers, find that they cannot virtually qualify under the current program, even after implementing upgrades and with plans for further investment and improvement. If the USF is going to serve its purpose and help serve rural America, FCC policies should adapt to recognize the unique circumstances of these carriers in order for them to provide affordable advanced telecommunications services to their customers, especially to those in rural areas.

It is my hope that if approved, the nominees will use their time at the FCC to commit that its policies ensure affordable access to advanced telecommunication services throughout rural America equal to what is available in urban and suburban areas.

I also look forward to hearing back from the nominees with answers to a few questions attached to my statement. I appreciate the courtesy of the Chairman to submit this statement and questions for the record.

Thank you, Mr. Chairman.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO HON. ROBERT M. MCDOWELL

*Question 1.* As part of the Telecommunications Act of 1996, Senator Snowe and I established the E-Rate program to provide schools and libraries with affordable access to telecommunications services and the Internet. No other program has been as singularly effective at closing our educational digital divide. Thanks to the E-Rate program, today more than 90 percent of all classrooms have access to the Internet. Children in the most rural communities are able to enjoy the educational benefits and opportunities that broadband provides. Recognizing the importance of the program, will you commit to me that you will support and protect the E-rate program as laid out in statute?

Answer. I will follow Congress' mandate as codified in the statute to implement and administer the E-rate program.

*Question 2.* In order for a government agency to function effectively, it must have the trust of the public. I worry that this confidence is undermined when Commissioners seek support from those the FCC regulates in order to promote their renominations. Such activity creates a potential conflict of interest and a perception that the Commissioner may be indebted to those entities.

Have you reached out to any companies regulated by the FCC to assist your renomination? Are you aware of any companies who have actively advocated for your renomination? If so, have you expressed your appreciation for their support? If confirmed, how will you guarantee that there is no appearance of a conflict of interest when considering a matter impacting a company that actively supported your renomination?

Answer. As I have learned from press accounts and oral communications from numerous individuals including, but not limited to: reporters, representatives from public interest groups, Members of Congress and their staffs, other government officials, industry attorneys and advocates, and many others, interest in who may even-

tually serve on the FCC has been especially high this year. It is safe to assume that an indefinite number of people freely exercised their First Amendment rights to petition their government in support of and in opposition to my renomination to the Commission. It is impossible for me or anyone else to know who all of these individuals are and who employs them—nor should I try to find out. In the same vein, I have not initiated any organized effort by third parties. Given this, I have expressed only general appreciation for any words of support that I have received directly.

It goes without saying that, if confirmed, I will continue to avoid even the appearance of a conflict of interest when considering any matter brought before the Commission, just as I did in the well-publicized AT&T-BellSouth merger proceeding in December 2006. I will commit myself to continuing to conduct the affairs of my office in a bi-partisan and ethical manner, and I will continue to make decisions as an independent commissioner at an independent administrative agency as I pursue policies that further the public interest.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
HON. ROBERT M. MCDOWELL

*Question 1.* In order to effectively extend mobile broadband to rural areas, companies must have access to backhaul facilities (also known as special access) at reasonable rates. Do you believe a review of special access rates could facilitate deployment of mobile broadband? If so, would you advise the Committee within 3 months of taking office of when you would undertake such a review?

Answer. With the rollout of more and more new communications technologies coming over the horizon, especially wireless technologies, the special access market will become even more important than it is today as the primary means for data backhaul. Debates over policy, and the important subsequent decisions that often emerge, should be firmly grounded not only in law but in solid facts as well. Rendering rules on an unsure factual foundation is akin to building a house on quicksand. As the General Accounting Office (GAO) and others have observed, the Commission needs a more complete record of where special access and other comparable facilities are located before we can determine the appropriate level of regulation—or deregulation—for special access services.

I proposed over a year ago to collect data on the state of the special access market from all providers to allow us to move forward in this important area. I am pleased that under Acting Chairman Copps it appears that we are now ready to begin the process of gathering the data we need to make informed decisions. If confirmed, I will continue to pursue this course.

Also, if confirmed, I hope my colleagues in the next Commission will move forward expeditiously on what I believe to be a win-win addition to the special access market: A notice of proposed rulemaking to examine possible limited uses of television “white spaces” for point-to-point backhaul in rural areas as a substitute for special access. This is an idea that was raised in our original notice, is thoroughly discussed on the record, and is already ripe for rulemaking.

Here is the challenge: all wireless services have to be backhauled to the Public Switched Telephone Network (PSTN) and the Internet via a network of some kind. Over the years, some people in the tech industry, as well as some of my colleagues, have complained about a lack of competition in the special access market which, they allege, artificially drives up backhaul costs. Competitive Local Exchange Carriers (CLECs) and competitive wireless carriers presented us with a possible solution to this challenge for rural areas, which enjoy more unused spectrum than urban areas and suffer from the least amount of special access competition. Some form of limited white spaces point-to-point licensing may allow entrepreneurs to find more efficient paths for their backhaul needs while leaving the lion’s share of white spaces spectrum on the table for unlicensed users.

Hopefully, a Commission inquiry can plant the seeds of progress to find a workable solution that inures to the benefit of all parties, but mainly, American consumers. If confirmed, I hope to prevail upon my new colleagues the importance of moving forward to further explore this idea.

*Question 2.* The Federal Communications Commission (FCC) formed NECA in 1983 to perform telephone industry tariff filings and revenue distribution. What do you believe is an appropriate level of oversight by the FCC over the activities and decisions made by the NECA?

Answer. The Commission must ensure that the National Exchange Carrier Association (NECA) conducts itself in accordance with applicable Commission rules and guidance. For example, with respect to NECA’s administration of interstate access charge tariffs and revenue pools on behalf of its member exchange carriers, and the

preparation and filing of average schedule formulas, the Commission must ensure that such activities are conducted in accordance with Part 69 of the Commission's rules. The Commission likewise must ensure that NECA, in its role as the administrator of the Interstate Telecommunications Relay Service (TRS) Fund, conducts itself in accordance with the Commission's rules, its contract, and the guidance issued pursuant to that contract.

In a letter I sent to Acting Chairman Copps in January of this year, I recommended that the Commission commence a thorough operational, financial and ethics audit of the Commission and its related entities. If confirmed, I will work to ensure that NECA is a part of that process.

*Question 3.* The Federal Government, through the FCC, has spent decades trying to expand minority ownership and operation of radio broadcasting companies. Even with those efforts, only 7 percent of full-power radio stations across the country are minority-owned. Because of the massive credit crisis, many of these stations are having difficulties in continuing to access the capital markets and meet their growing debt burdens. What measures will you take in order to preserve and enhance diversity in the radio broadcasting business?

Answer. Since becoming a Commissioner, I have made clear my concern about the state of female and minority ownership of broadcast properties. For that reason, I voted in favor of the Commission's Diversity Order in December 2007. That order focused on the possible and the legally sustainable—complying with the strict scrutiny standard established by the Supreme Court in *Adarand v. Peña*.

The Diversity Order included several measures designed to help "eligible entities" enter and succeed in broadcasting. The definition of eligible entities is based on Small Business Association (SBA) standards for small businesses. Those measures include easing rules to encourage greater investment in eligible entities and affording such entities additional time to meet broadcast construction deadlines.

The Diversity Order also barred discrimination on the basis of race or gender in broadcast transactions and banned the practice of "no urban/no Spanish" dictates in broadcast advertising. I have actively worked to encourage compliance with the "no urban/no Spanish" ban by meeting with advertising agencies on Madison Avenue to discuss the rule and monitoring the industry's ongoing efforts to resolve problems when they arise.

Last November, the Commission adopted new rules pertaining to the unlicensed use of the "white spaces" spectrum located between the TV channels. While new broadband technologies are the most likely uses of these channels, to me, the most exciting part about our action is that we are creating the opportunity for an explosion of entrepreneurial brilliance. Our deregulatory order will allow the market place to produce new devices and new applications that we can't even imagine today. Not only will the lives of millions of Americans be enriched by these new technologies, but I am confident that imaginative use of the TV white spaces could actually improve our safety as well. I am hopeful that robust unlicensed use of white spaces will give nimble entrepreneurs—including small, minority and woman-owned businesses—the freedom to disrupt the market in positive and constructive ways that will force incumbents to keep pace with this new revolution.

More recently, the Commission rechartered its Diversity Committee, which has been charged by Acting Chairman Copps to study alternatives to the eligible entities definition. I met with the Diversity Committee at its first meeting and stressed the importance of allowing the expression and representation of a large array of opinions and viewpoints within its membership and recommendations. If confirmed, I look forward to reviewing the results of the Diversity Committee's work, which may include recommendations to launch new studies designed to address the demands of *Adarand*.

I also continue to be interested in the potential viability of a new tax certificate program to promote broadcast ownership by economically disadvantaged businesses. Legislators through the years have expressed interest in reviving some form of the old FCC tax certificate policy, which Congress abolished in 1995. If confirmed, I would like to explore the options for using a tax certificate to expand minority and female ownership of broadcast stations—and perhaps could apply broadly to all telecommunications businesses—in ways that pass muster under *Adarand*.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. ROBERT M. MCDOWELL

*Question 1.* As you know, at a 2007 FCC hearing in Newark on the license renewal of WWOR, New Jerseyans testified about the station's failure to cover New Jersey news and events. Almost 2 years later, this station is still operating under

its expired license and has not improved its service to New Jersey. How can we get WWOR to live up to its obligations to New Jersey?

Answer. I am aware that WWOR's license renewal application remains pending in the Commission's Media Bureau and I have appreciated learning more about that situation from you and your staff. Should the FCC determine that the licensee of the station has failed to comply with specific commitments to serve New Jersey or its general public interest obligations to viewers within its community of license and larger service area, the agency has a variety of sanctions that it could impose. These include fines, reporting conditions, and a short-term renewal, in addition to the possibility of non-renewal. If confirmed, I will scrutinize any staff recommendation on the matter that may come before the full Commission.

*Question 2.* New Jersey is a net contributor of more than \$180 million a year to the Universal Service Fund. As the USF keeps growing, the burden on New Jersey and other donor states keeps getting bigger and bigger. When can residents of New Jersey and other donor states expect to see real reform and fairness in the USF?

Answer. I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is broken and is in dire need of comprehensive reform. For example, the Commission has for too long avoided answering the fundamental questions raised on remand by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) regarding the high-cost universal service support mechanism for non-rural carriers. I therefore was pleased when the Commission committed to release a notice of inquiry no later than April 8, 2009; issue a rulemaking no later than December 15, 2009; and release a final order that responds to the remand no later than April 16, 2010.

If confirmed, I look forward to working with my colleagues to satisfactorily resolve the questions posed to us by the Tenth Circuit and to continuing our work toward fundamental reform of the Universal Service and intercarrier compensation systems in an expedited fashion.

Additionally, I have long advocated that more comprehensive USF reform should follow five basic principles. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. I also support eliminating the identical support rule and moving over time toward support based on a company's own costs. If confirmed, I will remain mindful of these principles as we continue our work toward fundamental reform of the Universal Service and intercarrier compensation systems.

*Question 3.* As part of the Economic Recovery Act, the FCC will develop a national broadband plan by February 2010. In New Jersey, broadband has been deployed throughout the state, but many low-income residents—often in urban areas—cannot afford it, or it does not reach into their buildings. How will the FCC bring broadband to these underserved low-income residents, and not only more rural areas of the country?

Answer. I assure you that, if confirmed, I will proceed mindful of the importance of competitive and technological neutrality. Given the incredibly diverse nature of our country—both in terms of geography and demographics—our plan must not favor one particular technology or type of provider over another, even inadvertently. Broadband deployment throughout America simply is not a one-size-fits-all proposition. Wireline, wireless and satellite technologies are meaningful alternatives, each worthy of our attention. Low income residents in New Jersey will benefit from the lower prices resulting from competition among an array of service providers. If confirmed, I look forward to working with Congress and my Commission colleagues to develop a thoughtful, reasonable, practical and pragmatic National Broadband Plan.

*Question 4.* Almost 9 years after 9/11, we still do not have a national, interoperable public safety communications network. One of the major benefits of the DTV Transition that took place last week was supposed to be the creation of this network, but the portion of the airwaves set aside for public safety—known as the “D block”—is still vacant. What accounts for this delay? When do you expect to have a plan for the D block?

Answer. By way of background, Congress originally set aside 24 megahertz of the 700 MHz band for public safety use in 1997, but a mechanism for funding the build-out of a nationwide interoperable network was not put in place then and hasn't been since. In the absence of congressionally appropriated funding for this network, the Commission felt that a public/private partnership was the best way to jump-start funding and construction of a nationwide broadband interoperable public safety network.



Interested parties tell us that potential bidders were scared away by onerous build-out and service requirements that would have required the eventual licensee to incur massive costs in an atmosphere of extreme uncertainty regarding how many, if any, public safety entities might actually sign up as paying customers. Even at this late date—nearly 2 years after we finalized our original rules—there remains a lack of consensus among public safety entities as to the direction in which we should proceed.

If confirmed, I will continue to work with Congress to formulate new ideas. I will stay engaged with the public safety community. And, I will look forward to working with my new colleagues with renewed vigor to devise a new plan for this valuable spectrum.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
HON. ROBERT M. MCDOWELL

*Question 1.* I think that we need to provide parents with tools to guide their children's television viewing. I also think the FCC should take a broad look at children's programming issue and whether there are new policies or incentives to encourage quality programming on our airwaves. Could you please comment?

Answer. First, as a father of three young children, I appreciate your leadership on this important issue. If confirmed, I will be pleased to work with my colleagues to consider children's programming issues, including the possibilities for creative new policies or incentives to encourage quality programming. The Commission already is undertaking efforts to implement the Child Safe Viewing Act, which Congress enacted in December 2008. You have directed us to review and report on the existence and efficacy of various "advanced blocking technologies" that allow parents to shield their children from inappropriate video and audio content when such content is distributed across a wide range of electronic communications systems. I hope that, by advising Congress on the proliferation of technologies now available or in development for broadcasting, cable, satellite, wireless devices and the Internet, we will help parents better understand their options as well. The agency's efforts also may assist industry in spotting gaps or weaknesses in existing parental-control mechanisms, and thereby spur additional innovation.

*Question 2.* I am concerned about what children are exposed to on TV, including sexual content. The current review of blocking technologies by the FCC is very important. However, I would also note that we need to find ways to encourage quality children's programming on television. How do we incent broadcast and cable channels to provide such programming? Could the FCC do a notice of inquiry on this issue?

Answer. Again, as the parent of three young children, I share your concern regarding the coarsening of content on television. The Commission has authority to open inquiries on matters within its jurisdiction, such as children's television programming. An inquiry proceeding might provide the Commission with useful opportunities to hear from various interested parties, including the television industry, educators and parents, about new possibilities for encouraging the development of quality children's programming on both broadcast and cable channels. Should I be confirmed, I would support a well-written and properly balanced inquiry.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK WARNER TO  
HON. ROBERT M. MCDOWELL

*Question.* As you know, Congress directed the FCC to allocate 24 MHz in the 700 MHz band for public safety use. The FCC then put the D Block up for auction under service rules that would have created a public-private partnership with the public safety licensee to build and manage a shared network. However, the D Block failed to attract a winning bid—as you know—and no plans for the re-auctioning of that block have been made. Could you share your thoughts on the D Block and the public safety allocation—what do you think the next steps should be?

Answer. By way of background, Congress originally set aside 24 megahertz of the 700 MHz band for public safety use in 1997, but a mechanism for funding the build out of a nationwide interoperable network was not put in place and hasn't been since. In the absence of congressionally appropriated funding for this network, the Commission felt that a public/private partnership was the best way to jump-start funding and construction of a nationwide broadband interoperable public safety network.

Interested parties tell us that potential bidders were scared away by onerous build-out and service requirements that would have required the eventual licensee to incur massive costs in an atmosphere of extreme uncertainty regarding how many, if any, public safety entities might actually sign up as paying customers. Even at this late date—nearly 2 years after we finalized our original rules—there remains a lack of consensus among public safety entities as to the direction in which we should proceed.

If confirmed, I will continue to work with Congress to formulate new ideas. I will stay engaged with the public safety community. And, I will look forward to working with my new colleagues with renewed vigor to devise a new plan for this valuable spectrum.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO  
HON. ROBERT M. MCDOWELL

*Question 1.* You brought up the need for reform to the Universal Services Fund. Will you continue to recognize the high cost of providing services in Alaska?

Answer. Since becoming a Commissioner in 2006, I have visited Alaska three times—with my last trip being to Barrow this past winter. I have enjoyed learning more about Alaska's unique characteristics. As a result, I am committed to ensuring that Alaska remains connected to the world at large and is not left behind technologically. For example, I felt it critical when the Commission adopted the cap on competitive eligible telecommunications carrier (CETC) support in May 2008, to include an exception for all of the providers serving Alaska Native lands and tribal lands across the country—some of the most under-served parts of America. This limited exception was designed to ensure that companies operating in these remote areas will continue to receive high-cost support to provide their services while we move toward a permanent reform of the Universal Service system.

I look forward to continuing to work with the people of Alaska and you on these critical issues.

*Question 2.* Of the many proposed forms of reform, which do you think have the greatest chance of maintaining stability and viability of the fund?

Answer. I maintain that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. I also support eliminating the identical support rule and moving over time toward support based on a company's own costs. If confirmed, I will remain mindful of these principles as we continue our work toward fundamental reform of the Universal Service and intercarrier compensation systems.

*Question 3.* Satellite providers to Alaska are concerned that they will be exempted from the national broadband plan. It is important as we go forward the FCC recognize the importance of satellite to help fill the backhaul which is next to impossible to provide without major investment in satellite technology.

Answer. I assure you that, as we develop our record in this proceeding, I will proceed mindful of the importance of competitive and technological neutrality. Given the incredibly diverse nature of our country—both in terms of geography and demographics—our plan must not favor one particular technology or type of provider over another, even inadvertently. Broadband deployment throughout America simply is not a one-size-fits-all proposition.

Satellite technologies are a meaningful alternative to wireline and wireless, and each is worthy of attention. To deny the people of Alaska the benefits of broadband connectivity via wireless and satellite, for instance, would be tantamount to isolating the tens of thousands of Americans who live on Native lands and in subsistence villages.

*Question 4.* Do you support the need for the Commission, NTIA, and RUS to be able to support deployment of broadband in any form needed?

Answer. As discussed immediately above, I fully recognize and appreciate the importance of competitive and technological neutrality.

The first priority for any government involvement in broadband deployment should be to focus on unserved areas. I will support intelligently crafted and flexible ideas that are geared toward rectifying market failure in the context of broadband deployment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
HON. ROBERT M. MCDOWELL

*Question 1.* While there are more than 1.6 billion Internet users worldwide that number is eclipsed by 4 billion cell phone subscribers. Mobile phones are the single most widespread information and communication technology today and for good reason. The increased mobility, access, and productivity are all tangible results of wireless technology. A once nascent service has emerged as an indispensable tool that millions of consumers and countless businesses use on a daily basis.

But with all this growth, we are seeing constraints—spectrum is already a scarce resource in many areas—there is no new spectrum to allocate, only redistribute. That is why we must be proactive in advancing supportive spectrum policy and spectrum availability. Even President Obama and senior officials of the Administration have called for better use of the Nation’s wireless spectrum.

To assist in this effort, Senator Kerry and I have introduced legislation that calls for a comprehensive and accurate inventory of how the spectrum managed by both NTIA and the FCC is currently being used and by whom. This is the first step in tackling comprehensive spectrum policy reform.

Do you support such a spectrum inventory effort, given that there is at the very least a perceived scarcity of spectrum for advanced communications and broadband services? A GAO report in 2006 stated that there is “evidence that some of the spectrum is currently underutilized” so it seems such effort would be beneficial toward making sure it is utilized efficiently, right?

Answer. Given the need for the United States to preserve and expand our international competitiveness, all policymakers have an ongoing obligation to identify potential new spectrum resources. Conceptually, a spectrum inventory would be a beneficial exercise. If undertaken in a thoughtful, pragmatic and deliberate manner, an inventory would be a significant step toward making additional spectrum available for new advanced wireless services. If confirmed, I look forward to partnering with the NTIA, as well as closely coordinating with Congress and my Commission colleagues to develop and refine this idea.

*Question 2.* What additional resources, if any, and how much time would FCC require to complete an accurate inventory?

Answer. I would respectfully defer to the FCC Chair, as CEO of the Commission, on this question.

*Question 3.* The biggest issue last year with respect to network neutrality was with Comcast and its network management practices of peer-to-peer traffic. In August of last year, the FCC concluded Comcast violated the Commission’s Internet open-access guidelines by blocking BitTorrent peer-to-peer traffic and found that Comcast’s broadband-network-management practices were arbitrary and capricious. The Commission gave the carrier 30 days to “disclose the details” of those “unreasonable” network practices, as well as its plan for replacing them by year’s end with network-management practices acceptable to the FCC. Comcast subsequently filed suit against the Commission challenging the FCC’s authority to enforce those principles.

Given that the FCC is charged with regulating interstate and international communications, if the Court rules in favor of Comcast and that the FCC didn’t have the authority to enforce its Internet Principles, what steps will you take to ensure that the Commission has the power to protect consumers’ ability to access content, applications and services of their choice and that anti-competitive practices are being employed by carriers, which is what the principles were adopted for in the first place?

Answer. By way of background, I opposed last summer’s Comcast/BitTorrent order primarily because the order was legally deficient. As a procedural matter, what we had before us was an order regarding a pleading that was filed as a “formal complaint.” Yet, our rules mandate that formal complaints apply only to common carriers. Although I agree that we have general jurisdiction over these areas, the Commission did not then—and does not now—have rules governing Internet network management to enforce. When issued in 2005, the Commission did not intend the Internet Policy Statement to serve as enforceable rules but, rather, as a statement of general policy guidelines. Furthermore, the policy guidelines were not issued after a public notice and comment period as required by the Administrative Procedure Act. Additionally, the guidelines are not codified as rules in the Code of Federal Regulations. Even if the complaint was not procedurally deficient and we had rules to enforce, the Commission did not conduct a proper factual investigation. As a result, the evidence in the record was weak and conflicting. All we had upon which to rely were the apparently unsigned declarations of three individuals representing the complainant’s view, some press reports, and the conflicting declaration of a

Comcast employee. The rest of the record consisted of differing opinions and conjecture.

That said, as always, we owe it to both industry and consumers to engage in a principled and transparent decisionmaking process on any next steps in this area. At the end of the day, I will, if confirmed, work constructively with my colleagues to ensure that we proceed in a prudent and thoughtful manner to create the best possible regulatory and market conditions for American consumers.

*Question 4.* The Joint board recommended an interim, emergency cap on high-cost universal service support for competitive eligible telecommunications carriers. Some of the reasons for the implementation of this cap were to preserve the sustainability and sufficiency of the fund and it was determined the cap wouldn't inhibit broadband deployment in rural areas. That recommendation was adopted in May of 2008 with your support. Here we are well over a year and the interim cap is still in place.

What are your views on the impact the cap has had on sustaining USF, in light of the fact that the Contribution Factor has increased to 13 percent for the third quarter—it was at 11.3 percent when the cap was placed. It seems as if the cap didn't have the desired goal of reigning in the growth of the fund, did it?

Answer. The increases in the contribution factor this year have been attributable to a variety of factors, including reductions in the revenue base and true-ups and prior period adjustments of all four Universal Service mechanisms. Data from the Universal Service Administrative Company (USAC) reveals that, in the first three quarters of calendar year 2009, the interim Competitive Eligible Telecommunications Carrier (CETC) cap resulted in a reduction of demand on the high cost fund of \$231.6 million. Absent the interim CETC cap, the contribution factor for this quarter would have been about 13.5 percent.

I agree that the interim CETC cap is not a permanent solution to this problem. I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is in dire need of comprehensive reform. I have maintained that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse.

*Question 5.* Do you believe the interim cap has not restrained the expansion of wireless infrastructure in rural and unserved areas as initially determined and, if so, could you explain how?

Answer. As discussed immediately above, I agree that the CETC cap is not a permanent solution for reform of the Universal Service Fund. If confirmed, I look forward to joining with Congress and my Commission colleagues to undertake a comprehensive reform of this system.

*Question 6.* Also, does the FCC have data on the number of complaints it has received from telecommunications customers specifically about the USF charge on the bill compared to the number of complaints it receives from individuals that lack access to reliable and affordable communications services?

Answer. After receiving this question after the hearing, my office has requested this data from the appropriate offices at the FCC. We will provide you with this information as soon as we receive it.

*Question 7.* In November 2007, the Federal-State Joint Board on Universal Service recommended that the FCC make fundamental revisions in the structure of existing USF mechanisms. Specifically, the Joint Board recommended establishing three separate "funds"—one being a \$300 million broadband fund that would be tasked primarily with disseminating broadband Internet services to unserved areas, with the support being expended as grants for the construction of new facilities in those unserved areas.

Do you agree with the Joint Board's recommendation of establishing a broadband fund in order to address the continuing problem of the lack broadband availability in rural areas? How can we do that while trying to keep the fund manageable?

Answer. My colleagues and I joined in a unanimous vote to approve an order declining to implement all of the Joint Board's recommendations. That said, it is important to understand that the nearly \$8 billion in subsidy programs under the USF umbrella help support the facilities over which broadband services ride and, therefore, at a minimum indirectly subsidize broadband. The cost of USF is continuing to skyrocket. Accordingly, the importance in analyzing options that would reform both the contribution and distribution mechanisms is more apparent than ever—given that the contribution factor is now almost 13 percent—an all time high.

If confirmed, I will continue to proceed with the hope that a reformed system would operate in the most efficient and effective manner possible—collecting only

the amount necessary, and spending only what is collected, in pursuit of its congressionally mandated mission to ensure that all Americans have access to affordable quality services.

*Question 8.* Will USF reform be a priority of the Commission this year?

Answer. Since arriving at the Commission more than 3 years ago, I have repeatedly expressed a strong interest in tackling USF reform. As to the timing of any future actions, I would respectfully defer to the FCC Chair, who controls the Commission's agenda.

*Question 9.* The DTV Transition for full-power television stations has finally occurred and by most reports it went smoothly without any major problems. However, the FCC's consumer DTV help line did receive more than 900,000 calls since Monday of last week. The FCC reported that about 50 percent of those calls were about reception issues or difficulty receiving a specific station.

One problem that seems to be woven into those reception complaints is with the DTV Cliff Effect, where the broadcast signal is so weak that all that appears on a viewer's TV is a blank screen. The FCC previously estimated that "approximately 18 percent of stations, or 319, are predicted to lose coverage of 2 percent or more of the existing population they reached with their analog signals."

How accurate was that prediction? And can you specifically elaborate on how prevalent of a problem the cliff effect has been within these first few days of the transition?

Answer. As station-specific reception issues have come to light for some viewers in several markets since the June 12 transition, we have been actively working with local broadcasters to resolve those situations. The Commission at this time does not have sufficient information to assess the accuracy of its earlier prediction about the digital cliff effect, at least with respect to reception issues on the edges of digital stations' predicted service areas. However, once we have compiled all of the relevant data, I will ask the FCC Chair to share it with Congress.

To date, it appears that some viewers in a few larger markets are encountering difficulties receiving some, but not all, of the stations in their market. The Commission has found that some of these viewers can be helped through a combination of antenna repositioning and extra efforts to rescan boxes. As a result, we released a new consumer advisory, which explains those fixes.

We will continue working with broadcasters and consumers to explore all possible options for addressing technical issues. From what we can tell so far, a combination of different factors is in play in different places, so we expect to resolve difficulties on a case-by-case basis.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON TO  
HON. ROBERT M. MCDOWELL

*Question 1.* As you know, in September 2005, the FCC adopted a set of net neutrality principles that explicitly allows broadband providers to take reasonable steps to prevent unlawful activity such as child pornography and piracy or theft of copyrighted content over their networks. Please tell me your intentions to confirm and adhere to this policy during your tenure at the FCC.

Answer. Without exception, I analyze proposed FCC decisions with an eye toward identifying (and working to eliminate) rules and policies that may have possible unintended negative consequences, including impairing a network owner's ability to prevent unlawful activity such as child pornography and piracy or theft of copyrighted content over its network. In fact, your question touches upon a concern I have already expressed in two major FCC proceedings.

First, in 2007, I cast a partial dissent in our 700 MHz service rules proceeding. In voting against the open access condition, I noted my disappointment that the majority did not try to work with industry to forge a consensus solution rather than rushing to regulate without thinking through the detrimental effect the rule would have on a carrier's ability to flexibly manage its network. More recently, I opposed last summer's Comcast/BitTorrent order primarily because the order was legally deficient. I also noted the tremendous importance of granting network operators the continued flexibility to guard against the use of their networks to distribute unlawful Internet content such as child pornography and pirated or copyrighted content.

If confirmed, I will continue to identify and eliminate, where possible, those proposed rules and policies that may have possible unintended negative consequences. I will also support policies that will promote vigorous growth in the broadband markets to ensure that all Americans have access to the promise of high-speed Internet services, and that the Internet remains robust, open and safe.

*Question 2.* As the platforms for delivering content continue to evolve and what was once the sole domain of “TV content” is now delivered via Internet (via programmers’ websites, iTunes for purchase, content sites such as Hulu and YouTube, etc. . . .), some market behavior indicates that content owners are shifting their broadband business plan to leverage rules from the 1992 Communications Act written for negotiations between cable operators and content providers. Specifically what concerns me is that a content owner is now demanding network operators to pay for the right to distribute online content on a per subscriber basis whether their subscribers access the content or not, in effect double billing consumers for access to online content. Do you believe this to be an issue the FCC needs to address, and if so, what policies do you believe should guide the FCC’s action?

Answer. Regulators should give careful consideration before taking any action that may interfere with private contracts, absent clear statutory authority to do so. The Communications Act currently does not give the Commission power to regulate terms and conditions between content owners and those who distribute content online. Should Congress grant such authority to the Commission, I will, if confirmed, work with my colleagues to implement the statutory directives.

*Question 3.* Are you apt to investigate the existing rules that govern how television programming is distributed to cable and satellite operators in order to ensure that consumers, particularly those that reside in small and rural communities, are being treated appropriately by the market?

Answer. The Commission adopted an order in September 2007 that extended the prohibition on exclusive contracts between vertically integrated programming vendors and cable operators for satellite-delivered programming for 5 years, until October 5, 2012. I supported the extension of the program access exclusivity ban to help further encourage competition in the video distribution market.

As part of that 2007 order, we also launched a proceeding to examine negotiations in the marketplace for retransmission consent and programming carriage. I made it clear at the outset that I am concerned about the Commission venturing into what has long been squarely within the realm of the private sector. Of course, we must always pay careful attention to Congress’ mandates and intentions with respect to these issues. If I am confirmed and Congress provides further guidance in this arena, I will work with my colleagues to act upon those directives.

*Question 4.* What are your thoughts on the forbearance process and especially the interpretation of “deemed granted” petitions?

Answer. With respect to “deemed granted” petitions, as Section 10 of the Communications Act is currently written, action on a forbearance petition requires a majority of Commissioners to act to deny the request. The Commission is bound by the statutory provisions governing forbearance petitions. If, in the opinion of Congress, the operation of this statute is causing an undesired result, then it could certainly modify that provision. In the meantime, I favor a substantive vote by the Commission on each forbearance petition.

With respect to the forbearance process in general, I believe the process is flawed and should be fixed. Only Congress can amend Section 10, which is simple and clear in its mandate, but the Commission can take steps to improve its implementation. We currently are considering a draft proposal seeking comment on procedural rules that will help ensure the forbearance process is more efficient, predictable, fair, and transparent for all parties concerned—including the Commission.

*Question 5.* Our broadband ranking has stagnated at 15th in the world for a few years now. Competition is a key ingredient in driving investment and system upgrades that will improve broadband quality. Given that 90 percent of households have only two choices for broadband providers, should FCC policies promote competition to these limited last mile access points?

Answer. FCC policies should always promote competition, including in what has historically been a bottleneck: the last mile. During my time at the Commission, I have tried to promote more competition in the last mile by: supporting initiatives to make it easier for new entrants to compete in the video marketplace and, therefore, build new last-mile infrastructure; fighting for 700 MHz auction rules that would promote competition through the crafting of a wide variety of unencumbered market and spectrum block sizes; and taking steps to open up the use of the television “white spaces,” including for possible limited uses of this spectrum for point-to-point backhaul in rural areas as a substitute for special access, among others. America’s technological future could be brilliant if we, as policymakers, make the right choices. If confirmed, you have my commitment to support policies that will promote, not stifle, freedom, competition, innovation and more choices. I believe that if we adopt such policies, we will create boundless opportunities for American consumers and entrepreneurs alike.

*Question 5a.* Does the FCC's current copper line retirement policy hinder competition by continuing this duopoly?

Answer. The Commission in the 2003 Triennial Review Order declined to prohibit incumbent LECs from retiring copper loops or copper subloops that they have replaced with fiber. Instead, the Commission emphasized that its Section 251(c)(5) network modification disclosure requirements (with minor modifications) apply to the retirement of copper loops and copper subloops. It also noted that any state requirements that apply to an incumbent LEC's copper loop or copper subloop retirement practices continue to apply.

This policy is consistent with the Commission's general preference to promote facilities-based competitive deployment of broadband facilities. Such competition continues to grow, not just from the deployment of fiber by LECs, but also from cable providers entering new markets, overbuilders, and, increasingly, providers of fixed and mobile wireless broadband services.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY TO  
HON. ROBERT M. MCDOWELL

*Question 1.* The FCC has had before it the remand from the Tenth Circuit concerning the non-rural high-cost universal service program for the entire time you have been on the Commission and just received yet another round of comments. The non-rural program is currently the only means by which a carrier can qualify for USF support based on forward-looking economic cost. Based on your experiences at the Commission, what are your thoughts on how to determine eligibility to receive high-cost funding? Do you think the current distinctions between the rural and the non-rural programs make sense?

Answer. The Commission determined in May 1997 that high-cost universal service support should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide supported services. It also determined that rural carriers, which generally have higher operating and equipment costs (attributable to lower subscriber density, small exchanges, and a lack of economies of scale), could not at that time utilize the forward-looking cost model developed for non-rural carriers. The Commission chose instead to base rural support on embedded costs.

Since that time, the Commission has twice declined to adopt a forward-looking economic cost model for rural carriers. More recently, the Federal-State Joint Board on Universal Service stated in a recommendation its belief that it is in the public interest to maintain, for the present, existing rural LEC support mechanisms based on the provider's embedded costs. These decisions and recommendations were intended to ensure that rural telephone companies receive sufficient, specific, and predictable high-cost universal service support as required under Section 254 of the Act.

That said, the Commission has for too long avoided answering the fundamental questions raised on remand by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) regarding the high-cost universal service support mechanism for non-rural carriers. I was therefore pleased when the Commission committed to release a notice of inquiry no later than April 8, 2009; issue a further rulemaking no later than December 15, 2009; and release a final order that responds to the remand no later than April 16, 2010.

If confirmed, I look forward to working with my colleagues to satisfactorily resolve the questions posed to us by the Tenth Circuit and to continuing our work toward fundamental reform of the intercarrier compensation and Universal Service systems. In that context, the Commission can appropriately address its decision to provide different support mechanisms for rural and non-rural carriers.

*Question 2.* Iowa is a predominantly rural state. The GAO reported in 2008 that the USF high cost fund's structure has contributed to inconsistent distribution of support and availability of services across rural America. If we fail to remedy this situation of today's system, the problem will likely only get worse if the system is expanded to include broadband support. Why do you think vastly different high-cost support mechanisms present a fundamental inequity in the USF system? How should this inequity be addressed by the FCC to remedy the situation?

Answer. I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is in dire need of comprehensive reform. I have maintained that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base

of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse.

If confirmed, I look forward to working with my colleagues to satisfactorily resolve the questions posed to us by the Tenth Circuit and to continuing our work toward fundamental reform of the intercarrier compensation and Universal Service systems.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO JULIUS GENACHOWSKI

*Question 1.* As part of the Telecommunications Act of 1996, Senator Snowe and I established the E-Rate program to provide schools and libraries with affordable access to telecommunications services and the Internet. No other program has been as singularly effective at closing our educational digital divide. Thanks to the E-Rate program, today more than 90 percent of all classrooms have access to the Internet. Children in the most rural communities are able to enjoy the educational benefits and opportunities that broadband provides. Recognizing the importance of the program, will you commit to me that you will support and protect the E-rate program as laid out in statute?

Answer. Yes. I recognize the historic and ongoing importance of the E-rate program to schools and libraries and the goal of unlocking prosperity and opportunity for all Americans via communications technology. If confirmed, I commit to supporting and protecting the E-rate program as laid out in statute.

*Question 2.* Payphones are a vanishing feature of the American communications landscape. A decade ago, we had more than 2 million payphones across the country, but now have less than half as many. Despite this decline, they remain a primary link to the communications network for the 5–6 percent of American households without any form of household phone. They are a vital part of keeping Americans connected and can be a lifeline in times of emergency.

In light of the important role that payphones play and the risk associated with the loss of communications service, will you review existing payphone policies at the FCC in order to ensure that the Congressional mandate to compensate each and every completed call is met? Furthermore, will you ensure that disputes over payphone compensation are resolved in an expeditious manner?

Answer. Yes, if confirmed, I will review existing policies to ensure that the Congressional mandate in Section 276 of the Communications Act—to compensate each and every completed call—is met. I will also ensure that disputes over payphone compensation are resolved in an expeditious manner, as all matters before the Commission should be.

*Question 3.* In the 110th Congress, I introduced a resolution, co-sponsored by former Senator Obama, establishing a national goal for the universal deployment of next-generation broadband networks. Specifically, we called for networks with transmission speeds of 100 megabits per second, to be ubiquitously deployed by 2015. What steps can we take to accomplish this objective?

Answer. Extending next-generation broadband networks to all Americans is a vital national goal. Congress has entrusted the FCC with the task of developing a national broadband plan, which shall include “an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States” and “shall establish benchmarks for meeting that goal.”

If confirmed, I will ensure that the Plan is developed pursuant to a transparent, fair, and data-driven process that is open to, and seeks the best ideas from, all stakeholders. While I recognize that the goal of a ubiquitous 100 mpbs network by 2015 is an ambitious one, if confirmed, I will look forward to the Commission tackling this issue thoroughly as part of its Plan and as part of its effort to seek universal service in a way that unlocks opportunity and prosperity for all Americans.

*Question 4.* In the Cable Television and Consumer Protection Act of 1992, Congress expressed concern about discrimination that can result from the vertical integration of multichannel video programming distributors and video programming vendors. Pursuant to this law, the FCC set up a regulatory regime to govern program carriage disputes. These rules are an important part of making sure that independent programmers have a fair chance of securing carriage on multichannel video programming distributors, like cable companies and satellite companies. It is my impression, however, that the FCC rarely resolves carriage disputes in a timely way. How can the FCC be a more efficient forum for the resolution of these disputes?

Answer. Enforcing the program carriage provisions of Section 616 of the Communications Act is an important task entrusted to the FCC. In order to achieve the



purposes of the statute and serve the needs of video service consumers, the FCC must resolve carriage disputes in a timely fashion. I look forward to understanding specific concerns you may have about current program carriage dispute procedures at the agency and, if confirmed, will work with you and members of the Committee and my fellow Commissioners to achieve this goal.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
JULIUS GENACHOWSKI

*Question 1.* In order to effectively extend mobile broadband to rural areas, companies must have access to backhaul facilities (also known as special access) at reasonable rates. Do you believe a review of special access rates could facilitate deployment of mobile broadband? If so, would you advise the Committee within 3 months of taking office of when you would undertake such a review?

Answer. I believe that the United States should lead the world in mobile services, including mobile broadband, and that it is essential to extend these services to rural as well as urban areas. I have not yet been briefed by the FCC's staff on the effect of special access rates on mobile broadband deployment, nor on the details of any review or data relevant to this issue. If confirmed, I look forward to learning more about this important issue, to understanding your concerns in the area, and working with you and members of the Committee to find ways to bring prosperity and opportunity to all Americans.

If confirmed, I commit to advising the Committee within 3 months on my view about whether a review of special access rates is appropriate and, if so, when the agency would undertake such a review.

*Question 2.* The Federal Communications Commission (FCC) formed NECA in 1983 to perform telephone industry tariff filings and revenue distribution. What do you believe is an appropriate level of oversight by the FCC over the activities and decisions made by the NECA?

Answer. I have not yet been briefed by the FCC's staff on the specific activities and decisions of NECA and the FCC's current level of oversight. As a general matter, I am a strong believer in the goals of accountability, transparency, efficiency, and effectiveness when it comes to the management of government programs. I believe that any oversight and management of NECA should ensure that the programs it implements are achieving the goals Congress envisioned in the law. If confirmed, I look forward to understanding your concerns in this area and to working with you and other members of the Committee on this issue.

*Question 3.* The Federal Government, through the FCC, has spent decades trying to expand minority ownership and operation of radio broadcasting companies. Even with those efforts, only 7 percent of full-power radio stations across the country are minority-owned. Because of the massive credit crisis, many of these stations are having difficulties in continuing to access the capital markets and meet their growing debt burdens. What measures will you take in order to preserve and enhance diversity in the radio broadcasting business?

Answer. Consistent with the provisions of law that guide FCC authority to issue licenses to utilize the public's airways, if confirmed I would look forward to working with you, the Committee and my fellow Commissioners in developing constitutionally permissible strategies to ensure that there is a wide dissemination of licenses so that women-owned, minority-owned, and small businesses have ample opportunity to compete, innovate, and contribute their voices to the national and local media marketplace.

It has been reported that the Commission does not have complete data about the nature and extent of minority ownership of broadcast licenses. If confirmed, I would seek to improve the data that the FCC possesses in this area so that policymakers have an accurate assessment of license ownership and can develop appropriate and constitutionally permissible policies.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO  
JULIUS GENACHOWSKI

*Question 1.* Last year the Rural Carriers Association filed a petition at the FCC addressing exclusive agreements between wireless carriers and handset manufacturers. Subsequently, dozens of comments were filed on this subject by large and small carriers, consumer groups, manufacturers and regulators. Yesterday, I sent a letter to your future colleague Acting Chairman Copps, asking him to examine the conditions around these exclusive agreements and act if he believes that these agree-

ments are harming competition and consumer choice. If confirmed, will you examine the RCA petition and act accordingly if these agreements prove to be harming consumers?

Answer. Yes, if confirmed, I will ensure that the full record on the RCA petition is reviewed, and act accordingly to promote competition and consumer choice.

*Question 2.* Despite a U.S. minority population that reaches 35 percent of total population, there is a shocking lack of minority voices in media markets today. Minority owned radio licenses total just 4 percent, while television broadcast licenses total just 3 percent. I have worked in the past with then-Senator Obama to focus the attention of the FCC on this growing problem—I would like to see this disparity addressed early in your Chairmanship. Will you commit to working with me and others who are concerned about this problem to increase minority presence in media ownership to better reflect our diverse population?

Answer. Yes, consistent with the provisions of law that guide FCC authority to issue licenses to utilize the public's airways and constitutional precedent, if confirmed I would look forward to working with you and the Committee in developing constitutionally permissible strategies to ensure that there is a wide dissemination of licenses so that women-owned, minority-owned, and small businesses have ample opportunity to compete, innovate, and contribute their voices to the national and local media marketplace.

*Question 3.* What measures might you encourage the Congress or the administration to take in order to preserve and enhance diversity in the radio broadcasting business?

Answer. If confirmed, I look forward to learning more about the radio marketplace and the mechanisms that might prove successful in implementing congressional intent in this area. Among other areas, I also look forward to learning more about the possibility of low power FM radio as a new voice that could be licensed without harmful interference in communities around the Nation. If confirmed, I hope to work with you, the Committee, and my fellow Commissioners on this and other issues in the radio marketplace.

*Question 4.* The value of our public airwaves was demonstrated last year when the auctioning of the 700 megahertz band of spectrum resulted in \$20 billion for the U.S. Treasury. As wireless technology continues its rapid advance, wireless services are becoming less of a luxury and more of a necessity. This highlights our need for a modern day spectrum policy that puts this valuable natural resource to the best and most efficient possible use for the American people. Identifying additional spectrum for commercial use, both licensed and unlicensed use, leads to increased innovation and positive returns for consumers. I've introduced legislation with Senator Snowe and five bipartisan members of this committee to direct the FCC and the NTIA to perform a comprehensive spectrum inventory with the intent to identify additional spectrum for reallocation. Will you commit to considering this important initiative as part of the FCC's National Broadband Plan?

Answer. Yes, I agree that the FCC and NTIA should work together to produce a comprehensive and accurate inventory of the way in which spectrum is managed by both agencies, as well as existing uses and users. I agree with you that identifying fallow spectrum and opportunities for improving spectrum efficiency are critical to good spectrum management. I believe an inventory will be a tremendous aid in spectrum policy.

*Question 5.* The Recovery Act targets \$7.2 billion for broadband deployment, and there is considerable disagreement about how this money should be spent. NTIA is currently deliberating over rules that will determine how much of this money is spent on building out broadband lines to rural America, and how much is spent on demand-side initiatives that will drive adoption rates above the current low levels. My concern is that we are funding projects that are sustainable beyond the 2 year window of funding availability—the worst thing we could do is pour this money into projects that 2 years from now will not be viable. One idea to increase demand among low income populations is to expand the Universal Service Fund's "Lifeline" program to cover broadband service. Lifeline currently subsidizes standard telephone service for low income Americans. A study by the Pew Research Center's Internet and American Life Project shows that only a quarter of low income Americans have access to broadband service. What are your thoughts on expansion of the successful Lifeline program to include broadband service for low income Americans?

Answer. I believe efforts focusing on broadband adoption and affordability are vital to the goal of bringing 21st Century communications to all Americans. The national broadband plan entrusted to the FCC asks the agency to, among other things, develop a "detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public." If confirmed, I in-

tend to ensure that the FCC conduct an open, fair, transparent, and data-driven process to create this strategy and find ways to make sure that America not only has world-class networks, but that all Americans are able to benefit from them.

I have not yet had an opportunity to be briefed by agency staff on the implications of adjusting the Lifeline program to include broadband service for low income Americans. It is an idea that I am very interested in learning more about. I look forward to hearing your thoughts on this matter and, if confirmed, to work with you and the members of the Committee to explore whether it would be an appropriate step for the FCC.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO  
JULIUS GENACHOWSKI

*Question 1.* Do you agree that the broadcast airwaves belong to the American public and that it is fair and necessary to enforce some form of public interest obligations to ensure the airwaves actually serve the public? I'm not speaking about the Fairness Doctrine here—this is not about political perspectives. This is about ensuring there is diverse, local content that serves our communities—content that isn't offensive to our children.

Answer. I agree that the broadcast airwaves belong to the American public, and that broadcasters have an obligation to serve the public interest. Indeed, Section 309(k)(1) of the Communications Act expressly provides that the Commission shall grant a station renewal of its broadcast license if “the station has served the public interest, convenience, and necessity.”

*Question 2.* Last year I sent a letter to FCC Chairman Martin asking for details on the FCC's spectrum management. Like many letters, I think that one fell into a black hole at the FCC. At the time I also sent a letter to then Commerce Committee Chairman Inouye asking for a hearing on spectrum management. I would like to call up the FCC and NTIA to discuss fallow spectrum and greater efficiencies of spectrum management. The Senate adjourned before holding that hearing last session and I am making the same request of Chairman Rockefeller this session. In your tenure as Chairman, will you work to find fallow spectrum and ensure it is put to use?

Answer. Yes I will. I agree with you that identifying fallow spectrum and opportunities for improving spectrum efficiency are critical to good spectrum management. The release of the 700 MHz spectrum enabled by the Digital Television conversion will allow for the provision of wireless broadband services, both one-way and two-way, to the great benefit of consumers, including both public safety use, and commercial mobile broadband use. If confirmed, I look forward to working with you, the Committee, and the NTIA to identify opportunities to identify fallow spectrum and put it to use.

*Question 3.* I have just sent a letter to the FCC with Senators Kerry, Wicker and Klobuchar asking that the Commission review the exclusive device contracts of the biggest wireless companies (Verizon, AT&T, Sprint, and T-Mobile) that dominate the market with 86 percent of all wireless customers. These deals ensure that smaller wireless companies cannot compete with the big companies. It has also meant that one of the most popular devices in the US, the iPhone, is not available in North Dakota since we aren't served by AT&T yet. While I don't expect you to have an opinion without considering a full public record, do you agree that the FCC should examine this issue?

Answer. Yes, I agree that the FCC should examine the issue of exclusive contracts for devices. My understanding is that the FCC has at least one petition before it, requesting examination of exclusive agreements between wireless carriers and handset manufacturers, and if confirmed I look forward to making sure that the agency reviews the record in that proceeding, and determining how best to promote innovation, investment, competition, and consumer choice.

*Question 4.* The process by which companies seek forbearance from regulation at the FCC seems to me to be incredibly broken. We are frequently seeing petitions submitted to the FCC requesting forbearance from regulations and the FCC has a terrible process for handling and reviewing these petitions. It is critical that the FCC get these decisions right. I believe in one city, the FCC granted forbearance on the grounds that there was significant competition in the city, but discounted the fact that the regulations in place were a necessary factor in allowing the incumbent's competitor to survive. The FCC's decisions have usually been made in the hour before the petition shot-clock expired. I want to see changes in this process. Have you had a chance to review the forbearance procedures at the FCC? If so, do

you agree changes and clarity are needed both in terms of standards for approval and process for consideration?

Answer. I agree that clarity is vital in the standards of approval for forbearance and the process for consideration. I am aware that concerns have been raised, both at the Commission and in Congress, about the process as it exists today. As I understand them, concerns revolve around the expenditure of Commission resources to review and analyze applications that are subsequently withdrawn, the arrival of amendments or additional filings late in the forbearance process when the public has little or no time to review or respond to them, and the scenario resulting in the approval of a petition via the "deemed granted" provision when Commissioners' voting tally on a petition results in a tie, and with no written decision for the public or the courts to review. I understand that Acting Chairman Michael Copps has begun a review of the Commission's procedures with respect to petitions filed under Section 10.

In general, I am concerned about any Commission proceeding that drags on for an unduly extended period of time, that is decided without transparency, and that does not represent an efficient use of Commission resources. I believe that consumers, competitors, and other interested parties in a proceeding on a petition should see resolution on a timely basis. The Commission's handling of such matters should be fair, open, transparent, and based on facts.

*Question 5.* Independent programming on television contributes to diversity and enriches the American TV audience. However, in recent years, independent programmers have faced serious challenges in getting their programming on broadcast and cable television. One study notes that from 1989 to 2006, the amount of independent programming declined from 50 percent to 18 percent. Last year I asked the GAO to study the issue of independent programming and explain the decline, whether it's related to content ownership, and what we can do about it. I look forward to working with you to find policy approaches that will lead to more independent and diverse programming on television. Do you agree that this is an important issue for the FCC to review?

Answer. I agree that this is an important area to review and I look forward, if confirmed, to understanding your concerns in this area and working with you and the Committee to understand the issues surrounding independent programming on television.

*Question 6.* You will have a significant backlog at the FCC on day one. There are a number of complaints that have been pending before the FCC for years, including a number of cable carriage complaints where programmers unaffiliated with a cable company complain that they have been discriminated against in favor of affiliated programming. Are there things the FCC can do to ensure that these disputes are concluded in a reasonable amount of time at the FCC?

Answer. Resolving disputes in a reasonable period of time is a vital goal for the agency, and one that I would take very seriously if confirmed. While I have not yet been briefed on the agency's procedure for handling program carriage complaints, I look forward to learning more and, if confirmed, to working with you, the Committee and my fellow Commissioners to find ways the FCC can resolve these disputes efficiently, equitably, and in a way that improves the choices available to video service consumers.

*Question 7.* Recently a group of artists filed a complaint at the FCC asking the Commission to look into allegations against radio broadcasters that they have been violating their public interest obligations. This is related to a lobbying campaign regarding legislation determining whether artists should be paid for the performance of their music on broadcast radio. The complaint alleges that some stations have been running ads against the legislation while at the same time refusing to run ads for the opposing side. They also allege that some stations are refusing to play certain artists who have expressed support for the performance rights legislation.

If true, these allegations call into question whether certain broadcasters are abusing the terms of their licenses. Do you believe that, if the allegations are true, they raise questions that should be discussed in the context of their license renewal? Do you believe the FCC should end the process of just rubber stamping a license renewal application and actually review applications? Do you believe that the FCC should return to the days when license renewals were reviewed every 3 years instead of every 8 as they are today?

Answer. I have not yet been briefed by the FCC's staff on this matter. If confirmed, I would ensure that the FCC look into these allegations and the all the questions they raise. On license renewal cycle, I also have not yet been briefed by FCC staff. I understand that there are different points of view on this question and I have not prejudged the issue.

I look forward to hearing your concerns on these topics and, if confirmed, to working with you and other members of the Committee on resolving them.

*Question 8.* Do you believe that network openness requirements of other countries have helped to spur broadband development for our competitors?

Answer. Extending next-generation broadband networks to all Americans is a vital national goal. I believe the FCC can gain valuable insight in how to achieve this goal by studying the example of other countries and drawing appropriate lessons. The FCC will have an opportunity to begin this process when it fulfills Congress's instructions in the Broadband Data Improvement Act, which requires the FCC to consider information about broadband deployment in 25 countries. While I have not yet been briefed about the Commission's findings on this topic, I will be interested to see how other countries have addressed the issue of network openness.

*Question 9.* I would like to see USF expanded to broadband service and moving rural broadband forward in terms of speeds and availability. But I know we first need to stabilize the fund. Do you agree that the Universal Service Fund (USF) that's expanded to broadband is a critical component of communications service in America? Do you agree that any USF reform should be done carefully and deliberately with full input from all stakeholders?

Answer. I agree that reforming the universal service fund to support broadband is an important national objective. In the previous 75 years, the universal service system played an essential role in bringing voice service to nearly all Americans—which in turn was a critical factor in establishing American's economic leadership, and in building prosperity and opportunity in rural as well as urban areas. I believe that the goal going forward must be to achieve the same result with respect to broadband—which is already an indispensable communications technology, and will only become more central to American lives over time. Orienting the universal service system toward broadband can play an important part in this transformation. If confirmed, I look forward to identifying effective, efficient ways to make sure that the universal service system can support the goal of universal broadband access.

I also agree that USF reform must be done carefully and deliberately with full input from all. I believe the Commission's processes must be open, fair, transparent, and based upon facts. If confirmed, I would seek to consult closely with Congress, and my fellow Commissioners, to craft policies that provide predictability of subsidy support, marketplace certainty, and assurance of affordable, high-quality service for consumers.

*Question 10.* I am concerned about the lack of focus at the FCC over the last few years on international issues generally, and satellite issues specifically—I hear that these issues get pushed to background or more generally ignored. Over the last few years I have heard that processing times for satellite related applications have slowed dramatically at the Commission. Do you believe that the FCC should place a higher priority than it has in the recent past on international issues? Will you ensure that the International Bureau is properly staffed to manage the complicated set of international and global issues that are a critical part of modern communications?

Answer. If confirmed, I will ensure that the International Bureau is properly staffed to manage the complicated set of international and global issues that are a critical part of modern communications. I believe that this can benefit U.S. consumers and businesses in a variety of ways, as it has in the past. With respect to satellite applications, I believe they should be processed—like all license applications—expeditiously and, if confirmed, I will look into the processing times for satellite-related applications and work to ensure that the International Bureau is properly staffed for there to be prompt processing of applications.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
JULIUS GENACHOWSKI

*Question 1.* Mr. Genachowski, a few years back, the Commission placed as a condition to the Verizon-MCI and the AT&T-BellSouth mergers the requirement that each new combined company sells standalone broadband for a period of time. How successful do you think these conditions were in increasing broadband adoption? Do you have a sense of how actively the telecom companies marketed their standalone broadband products? Do you think it would have made a difference if those companies had to report to the Commission or Congress on its efforts to provide standalone broadband? Does the Commission intend to examine the issue of standalone broadband in the context of its national broadband plan?

Answer. I have not yet been briefed by the FCC's staff on the effects of the stand-alone broadband provisions of the recent mergers you identify. If confirmed, I look forward to learning about this important question. In general, I support efforts to encourage full disclosure of the products, services, prices, and terms that communications providers offer to the public.

With respect to the national broadband plan, I anticipate that the issue you raise would be among those raised by stakeholders and examined by the agency. If confirmed, I will ensure that the Plan is developed pursuant to a transparent, fair, and data-driven process that is open to, and seeks the best ideas from, all stakeholders.

*Question 2.* Mr. Genachowski, what do you see as the FCC's role in safeguarding community media resources like PEG channels and production facilities?

Answer. The Communications Act contains several provisions to ensure that local communities derive the maximum benefit from public resources extended to communications companies when such entities are authorized to provide service. For cable operators and other multichannel video distributors, access to public rights-of-way and issuance of a franchise to provide cable television service in a community comes with concomitant obligations to ensure that local community needs are met through support for and allocation of capacity for public, educational, and governmental (PEG) use.

I believe these are important policies and represent yet another commitment by Congress to ensuring that communications companies provide tangible benefits to enrich and ennoble the media environments of the communities they serve.

As I understand it, the FCC is obligated to fulfill certain statutory requirements of the franchising provisions of the Communications Act, including regulations pursuant to Title VI of the Communications Act to implement and enforce PEG capacity and use requirements as well as the franchise fee assessments that support such use. If confirmed, I will be committed to implementing and enforcing such provisions consistent with congressional intent and through processes that are open, transparent, fair, and fact-based.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
JULIUS GENACHOWSKI

*Question 1.* Broadcasters have to fulfill public interest obligations in exchange for using the public airwaves. In your opinion, can a broadcaster satisfy its public interest obligations solely by running public service announcements and volunteering in the community, or does it also have to provide adequate local news coverage?

Answer. I am skeptical that a broadcaster could satisfy its public interest obligations solely by running public service announcements and volunteering in the community. With respect to local news, the Commission has noted in the past in the context of discussing the public interest obligations of broadcasters that "television is the primary source of news and information to Americans." *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, 14 FCC Rcd 21633 (1999). Because of "the impact of their programming and their use of the public airwaves, broadcasters have a special role in serving the public." *Id.* Americans value and rely upon the local news that broadcasters provide, and providing news coverage of matters of local significance is one of the most important ways that broadcasters can fulfill their obligations to the communities they serve.

*Question 2.* In 2007, the FCC held a hearing in Newark, New Jersey, on the license renewal of WWOR—New Jersey's only high-power commercial television station. New Jerseyans testified about the station's failure to cover New Jersey news and events. Almost 2 years later, this station is still operating under its expired license and has not improved its service to New Jersey. If you are confirmed, will you review the record in this case thoroughly and immediately?

Answer. Yes.

*Question 3.* New Jersey is a net contributor of more than \$180 million a year to the Universal Service Fund. As the USF keeps growing, the burden on New Jersey and other donor states keeps getting bigger and bigger. What plans do you have to reform the USF and bring some fairness to donor states like New Jersey?

Answer. I am aware of the growing level of universal service support and am concerned about the long-term impacts that such increases have on the viability of the fund and on ratepayers. Historically, my understanding is that consumers in large, more urban States pay more into the universal service than they received out of universal service funding. It is also my understanding that within States, there are Statewide universal service mechanisms that often cross-subsidize residential consumers from business users, and rural areas from more urbanized areas within the

State. In the Telecommunications Act of 1996, Congress also included new provisions, such as the “E-Rate” provision to provide broadband access to K–12 schools and public libraries, which today provide \$2.25 billion in subsidized access to the Internet across the country. The E-Rate has assisted hundreds of thousands of children and library patrons to access the Internet in communities around the nation, including in more urban states.

I believe that universal service mechanisms should be developed and administered in a way that is efficient and effective in meeting the objectives that Congress tasked the FCC to fulfill in the law. I am mindful of the impact that universal service has upon ratepayers, especially during the current difficult economic climate, and if confirmed, will endeavor to reform universal service by consulting closely with you and the Committee, my Commission colleagues, and affected parties, in a process that is open, transparent, fair, and fact-based.

*Question 4.* As part of the American Recovery and Reinvestment Act, the FCC will develop a national broadband plan by February 2010. In New Jersey, broadband has been deployed throughout the state, but many low-income residents—often in urban areas—cannot afford it, or it does not reach into their buildings. Under your leadership, how will the FCC bring broadband to these underserved low-income residents, and not only more rural areas of the country?

Answer. The Act instructs the FCC to, among other things, conduct “an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States” and to create “a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public.”

If confirmed, I will ensure that the national broadband plan is developed pursuant to a transparent, fair, and data-driven process that is open to, and seeks the best ideas from, all stakeholders. I believe that this process should bring forth useful solutions to the deployment and affordability/adoption issues in New Jersey and I look forward to working with you on these important issues.

*Question 5.* Almost 9 years after 9/11, we still do not have a national, interoperable public safety communications network. One of the major benefits of the DTV Transition that took place last week was supposed to be the creation of this network, but the portion of the airwaves set aside for public safety—known as the “D block”—is still vacant. When do you expect to have a plan for the D block?

Answer. I share your view that interoperability for public safety networks is one of the highest priorities for the FCC. It has been too long since 9/11 without sufficient progress on interoperability. If confirmed, I will ensure that the FCC will have an expeditious process to establish a path to the prompt availability of nationwide interoperable broadband for public safety, including a plan for the D block.

*Question 6.* Some cities, counties and states have built or plan to build interoperable broadband networks in the 700 MHz public safety band. Public safety entities have requested authorization to use the 700 MHz band to address their needs in short order through the funds in the American Recovery and Reinvestment Act. As you develop a plan for this spectrum, how will you account for the work and planning that state and local public safety agencies are doing already?

Answer. As the FCC develops a plan for the 700 MHz public safety spectrum, it is essential that the FCC take into account the work and planning that state and local public safety agencies have already conducted. While I have not yet had an opportunity to review the record or be briefed by FCC staff, I understand that a number of localities have filed waiver requests with the FCC in order to move forward with 700 MHz networks in their jurisdictions. If confirmed, I commit to reviewing and acting on those waiver requests promptly.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
JULIUS GENACHOWSKI

*Question 1.* I think that we need to provide parents with tools to guide their children’s television viewing. I also think the FCC should take a broad look at children’s programming issue and whether there are new policies or incentives to encourage quality programming on our airwaves. Could you please comment?

Answer. I agree completely that providing parents with appropriate tools to guide their children’s television viewing is an essential goal. As the parent of 2-, 5-, and 17-year-olds, I share the concern of so many parents about children being exposed to inappropriate material on television. My interest in this area led me to choose to become involved with Common Sense Media, a non-partisan, non-profit organiza-

tion dedicated to improving the media and entertainment lives of children and families.

The report the Child Safe Viewing Act instructs the FCC to produce by August 29, 2009, should be an important step in this process. If confirmed, I look forward to being briefed about the work the Commission staff has done so far on this matter and I can assure you that completing the report will be a high priority for the agency.

I am optimistic that technological innovation is capable of providing parents with new, easy-to-use tools to give them more choice about what their children are exposed to. I am hopeful that technology in this area can advance as quickly as it does in other areas of the communications marketplace, and I believe that the FCC needs to take a broad view of how it can help encourage the process. Giving parents the ability to easily and reliably identify high-quality, high-value educational programming may provide companies with increased incentives to produce such programming. I am very interested, if confirmed, in the FCC being involved in efforts to develop solutions that help parents and families, and I agree that a notice of inquiry on the issue could be a helpful first step.

*Question 2.* I am concerned about what children are exposed to on TV, including sexual content. The current review of blocking technologies by the FCC is very important. However, I would also note that we need to find ways to encourage quality children's programming on television. How do we incent broadcast and cable channels to provide such programming? Could the FCC do a notice of inquiry on this issue?

See answer to Question 1 above.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
JULIUS GENACHOWSKI

*Question 1.* Over the last 10 years, the U.S. has gone from being a world leader in Internet penetration to being 15th or 20th or worse, depending upon what statistics you read. Why did that happen? What can be done to reverse the trend?

Answer. The statistics you cite are certainly cause for concern and I believe returning to a position of international leadership in terms of next-generation broadband networks is a vital goal for the country.

Congress has entrusted the FCC with the important task of developing a national broadband plan, which shall include "an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States" and "shall establish benchmarks for meeting that goal." If confirmed, I will ensure that the Plan is developed pursuant to a transparent, fair, and data-driven process that is open to, and seeks the best ideas from, all stakeholders.

*Question 2.* I believe that telephone and Internet access should not be considered luxuries but basic utilities. Yet Americans who live in rural areas, who make up 17 percent of the U.S. population, are much less likely to have broadband than suburban or urban dwellers. Rolling out broadband to rural America today should be made a priority in the same way that rural electrification was in the 1930s. The stimulus funds available for broadband also come at a time when the Nation could potentially take significant "leap frog" steps to overcoming the digital divide. Federal funding alone, however, will not be enough. What will you do as FCC Chairman to ensure that rural Americans benefit from advanced telecommunications, including broadband?

Answer. In the previous 75 years, the universal service system played an essential role in bringing voice service to nearly all Americans—which in turn was a critical factor in establishing American's economic leadership, and in building prosperity and opportunity in rural as well as urban areas. I believe that the goal going forward must be to achieve the same with respect to broadband—which is already an indispensable communications technology, and will only become more central to American lives over time. Orienting the universal service system toward broadband can play an important part in this transformation. If confirmed, I look forward to identifying effective, efficient ways to make sure that the universal service system can support the goal of universal broadband access.

In the American Recovery and Reinvestment Act (the "Recovery Act"), Congress tasked the FCC with developing a national broadband plan that has universal access to broadband for all Americans as its overarching objective. The Recovery Act also included funding for the data collection and mapping of broadband deployment and assets throughout the country. I believe this mapping will assist policymakers to better gauge the nature and extent of broadband deployment in the country.



If confirmed, I would look forward to consulting closely with Congress, and collaborating with my fellow Commissioners, on crafting broadband policies and universal service mechanisms to make further progress in extending service to unserved areas through open, fair, transparent, and data-driven processes.

*Question 3.* As the FCC formulates a national broadband plan, the adoption of broadband by end users should be an important part of measuring its success. Simply laying fiber pipe across the country is not sufficient if people cannot afford or do not understand the economic and practical value of adopting it. What educational efforts or other activities will be needed to ensure high adoption rates for broadband? What do you propose to do to help low-income Americans afford access to broadband? Do you support extending current Lifeline and Link-Up programs to cover broadband?

Answer. I believe efforts focusing on broadband adoption and affordability are vital to the goal of bringing 21st Century communications to all Americans. The national broadband plan entrusted to the FCC requires the agency to, among other things, develop a “detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public.” If confirmed, I intend to conduct an open, fair, transparent, and data-driven process to create this strategy and find ways to make sure that America not only has world-class networks, but that all Americans are able to benefit from them. I anticipate that the strategy will include discussion of educational efforts and measures targeted at helping low-income Americans afford access to broadband.

I have not yet had an opportunity to be briefed by agency staff on the implications of adjusting the Lifeline program to include broadband service for low income Americans. It is an idea that I am very interested in learning more about. I look forward to hearing your thoughts on this matter and, if confirmed, to work with you and the members of the Committee to explore whether it would be an appropriate step for the FCC.

*Question 4.* New Mexico is a rural state which faces difficult “digital divide” issues. However, my state is developing an exciting broadband initiative and intends to apply for NTIA broadband funds with a coordinated, multi-partner proposal that includes state government, private telecom companies, rural and tribal communities, and nonprofit organizations. As New Mexico attempts to foster wholesale ‘open network’ solutions for publicly-funded fiber infrastructure throughout the state, how should state broadband planners consider the limitations on public/private shared networks which are imposed by E-Rate and the FCC Telehealth Program?

Answer. I believe strongly in the goal of bringing 21st Century communications to all Americans, and am very interested in learning more about the exciting broadband efforts taking place in New Mexico. I have not yet had the opportunity to be briefed in detail on the issue of public/private shared networks in the context of E-Rate and the FCC Telehealth Program. However, if confirmed I look forward to learning more about this issue, and I will make sure that the Commission’s staff serve as a resource to you and to the many participants in the ongoing efforts in New Mexico. One of the reasons I believe that openness is so important in the Commission’s processes is to ensure that Commission policies are informed by the facts and the real experiences of those in all sectors seeking to help bring broadband to Americans.

*Question 5.* When President Clinton visited Shiprock, New Mexico, he was introduced by a bright Navajo girl who had won a computer. Yet she could not connect her new computer to the Internet. In fact, her family could not even get a telephone line to their home. Shortly after their daughter’s story made the news, her family had a satellite telephone installed free of charge in their home. Yet far too many tribal areas still do not have basic phone service, let alone broadband. Telephone access in Indian country today is less than 70 percent. Broadband access may be only 10 percent. Although the FCC has taken some positive steps to address this problem, the digital divide facing Indian country still remains. How will the FCC under your leadership work to erase the digital divide in Indian country?

Answer. I am very concerned about the digital divide in Indian country. Given the vital importance that broadband access to the Internet plays in every aspect of our lives and our economy, ensuring universal access to broadband in every community is essential. Indeed, Congress strongly reinforced this in the American Recovery and Reinvestment Act when it tasked the FCC with developing a National Broadband Plan. That Plan has as its overarching objective achieving universal access to broadband. Importantly, it also requires the FCC to provide a detailed strategy for achieving affordability of such service, which is may be vitally important in achiev-

ing success in adoption in Indian country once service is extended to unserved areas. If confirmed, I look forward to working with you on this critical issue.

*Question 6.* Given the distinct challenges and unique situation of our Nation's tribes, do you support having a tribal office within the FCC to better assist tribes' efforts to gain access to modern telecommunications services?

Answer. This is an interesting suggestion and I believe it merits my understanding better how such an office, or designated staff, could better assist tribes' efforts to gain access to modern communications. If confirmed, I look forward to working with you on this idea.

*Question 7.* My understanding is that the Telecommunications Act does not specifically mention tribes yet it should be understood that tribes were meant to be included. Will you support a flexible regulatory approach in order to meet the spirit of the law when helping tribes improve telecommunications access in Indian country?

Answer. I am not deeply familiar with the issue you describe, but if confirmed, I will seek to work closely with you and the Committee to understand your concerns and ensure that congressional intent with respect to the law is fulfilled.

*Question 8.* The FCC has not had a hearing in 10 years that focused on telephone service on tribal lands. Would you seek to reinstate hearings that focus directly on broadband and other telecommunication services critical to tribal lands?

Answer. Yes. I believe the FCC should do so.

*Question 9.* During the campaign, President Obama said that reforming our universal service system will be a priority. I think that this essential if we are going to ensure affordable Internet access in rural parts of the country. Broadband access is becoming more and more important for economic development. Like the telephone in an earlier era, broadband has become essential in many ways. Job seekers must often look online for employment listings and file their applications electronically. Companies are less likely to locate or expand to areas where high speed Internet access is not affordable. Important public information from government agencies and news outlets is often available online. Will universal service reform be a top priority for the FCC under your leadership?

Answer. Yes. I believe that the FCC must tackle the issue of universal service reform, along with the related issue of intercarrier compensation, for precisely the reasons you describe.

*Question 10.* What principles should guide any effort to reform universal service?

Answer. I believe any reform of universal service should be conducted in an open, transparent, fair, and data-driven process. I believe that the principles that should guide reform are embodied in the statutory provisions Congress gave the FCC to implement. Specifically, these principles are embodied in Section 254(b) of the Communications Act and include ensuring quality and affordability, access to advanced services in every region of the nation, comparable service and rates in rural, insular, and high cost areas as in urban areas, equitable and nondiscriminatory contributions to funding, and specific and predictable support mechanisms.

*Question 11.* Which other countries might provide models for U.S. efforts?

Answer. I believe the FCC should look broadly at international experiences for lessons that can be helpful as the FCC crafts a national broadband plan.

*Question 12.* I support the FCC's role in helping ensure that radio and television serve the needs and interests of their local communities. Yet some previous proposals such as the "unattended operations" rule would unduly harm small local broadcasters while not achieving the desired result in the most efficient manner. As the FCC considers ways to promote localism—and ensure that broadcasters understand and address the needs of their local community—will you consider weighing the costs that the FCC regulations place upon broadcasters with the benefits they provide to the community?

Answer. Yes, if confirmed, I will certainly weigh the costs of FCC regulations against the benefits they provide.

*Question 13.* Companies across the country complain of delays in processing their applications for DTV translators. What should the FCC do to expedite such applications? Is the current FCC electronic filing system adequate to expeditiously process such applications?

Answer. I have not yet had an opportunity to be briefed by the FCC staff on the agency's progress in the area of processing applications for DTV translators. I understand that the Commission last month addressed many issues relating to the processing of so-called "in-contour" applications, but that other issues remain, in particular for more distant translators. If confirmed, I am interested in learning

more about where these issues stand and finding ways to ensure that the FCC can address applications in a timely fashion.

I have also not yet had an opportunity to be briefed on the agency's electronic filing system and its suitability for processing applications of this sort, but I look forward to learning more about this issue as well.

I hope that the Commission can be a resource to you and other members of the Committee, and I am very interested if confirmed in ensuring that the FCC's website is easy to use for license applicants, other entities with business before the Commission, and for the American public.

*Question 14.* Satellites are an important part of the Nation's telecommunications infrastructure. The regulatory process, however, has been criticized as cumbersome and slow. How would you make the regulation of the satellite industry more efficient and ensure that applications are acted upon quickly?

Answer. If confirmed, I will ensure that the International Bureau is properly staffed to manage the complicated set of international and global issues that are a critical part of modern communications. I believe that this can benefit U.S. consumers and businesses in a variety of ways, as it has in the past. With respect to satellite applications, I believe they should be processed—like all license applications—expeditiously and, if confirmed, I will look into the processing times for satellite-related applications and work to ensure that the International Bureau is properly staffed for there to be prompt processing of applications.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
JULIUS GENACHOWSKI

*Question 1.* When I was Governor of Virginia, I worked with Congressman Boucher to get grants to deploy broadband to Lebanon, Virginia. The community developed its own workforce training center—which attracted Northrop Grumman and IT firm CGI to set up facilities in Lebanon and provide 700 jobs to residents. But pulling this broadband deployment effort together in Lebanon took a lot of work and coordination among the local, state, and Federal Governments—and the industry. Not every community has experience with projects of this type.

a. In the National Broadband Plan that the FCC is currently developing, what do you think can be done to provide communities with assistance with their broadband deployment efforts?

b. If such communities had access to expert, independent consultants who provide them with impartial advice to develop their project and application, it would improve the quality of their projects and increase the likelihood that their broadband deployment efforts would be successful. What are your thoughts on having independent consultants available to communities that need it?

Answer. I believe that providing communities with assistance in achieving broadband deployment goals can be an important strategy as part of the national broadband plan. If confirmed, I am certainly interested in developing ways that the FCC can work with state and local governments to bring the benefits of 21st century communications networks to all areas of the country and to all Americans. I have not yet been briefed in depth on the idea of independent consultants, but I am interested in the Lebanon experience and look forward to learning more about it. In general, I would like to see the FCC gather best practices and ideas from around the country in developing a national broadband plan.

*Question 2.* I understand that one of the benefits of the digital transition is that it makes possible not only high-definition video and high quality sound for broadcasters' main programming channels, but also new services that fully utilize the added capacity made possible by digital technologies. For example, I understand that Qualcomm has introduced its MediaFlo mobile television product and that the Open Mobile Video Coalition is developing the capability to develop mobile video services that would deliver programming such as local news, weather, sports and emergency alerts, to cell phones, computers, screens on the back of driver seats in cars and various new devices. I understand that a pilot of the Coalition's service will be launched in Washington soon and as many as 70 stations will put this service on the air before the end of year. Could I ask you to have the FCC follow these new technologies closely and keep us informed about them?

Answer. Yes. I believe that communications is the key to unlocking opportunities and prosperity and that the United States should have a world-leading 21st century infrastructure. My recent experience in working with start-up technology companies has convinced me that it is critical to have an FCC that is technologically savvy and follows advances in the field. If confirmed, I think it is important to ensure that the FCC follows new technologies closely, such as the ones you mention, and I look

forward to sharing this information with you and other interested Members of Congress.

*Question 3.* I understand that the FCC collects broadband data from providers on its Form 477. States may collect similar data from providers for their own broadband deployment efforts. As they work on broadband deployment projects from the American Recovery and Reinvestment Act, states would be in the position to easily augment the FCC Form 477 data with the data they provide to the NTIA and the Rural Utilities Service. The FCC has historically operated in a structured/closed environment. In light of the new Administration, the assignments at hand and the need for the Commission to collaborate with agencies throughout the Federal Government, the states, and a vast number of stakeholders. How will you evolve the Commission into a more collaborative environment that embraces concepts such as data sharing (with data sharing agreements that preserve confidentiality, etc.)?

Answer. The American Recovery and Reinvestment Act included funding for the data collection and mapping of broadband deployment and assets throughout the country, with roles for the NTIA, the FCC, and the states. I believe this mapping will help policymakers to better gauge the nature and extent of broadband deployment in the country and also lay the foundation for ongoing collaborative efforts, as you mention.

I strongly believe that the FCC must operate in an open, fair, transparent, and data-driven manner. It is only by bringing the best ideas, data, and analysis to the table that the Commission will be able to meet the complex challenges and abundant opportunities it faces.

*Question 4.* With more and more broadband advocates pointing to wireless as the solution to rural broadband deployment, I am concerned that industry has neither the economic incentives nor the build-out obligations to ensure universal wireless broadband access. What can and should the FCC do to make sure that rural consumers are not left behind?

Answer. I agree that wireless broadband holds tremendous promise for reaching rural consumers. As we seek ways to extend the reach of broadband, we must reward investment and innovation and promote competition in the rollout of technologies.

As mentioned above, the Recovery Act also included funding for the data collection and mapping of broadband deployment and assets throughout the country, which I believe can and should increase understanding of broadband access issues in rural areas.

In addition, I believe that reforming universal service, and the related issue of intercarrier compensation, are issues that merit the early and careful attention of the Commission, and that also affect wireless broadband buildout.

If confirmed, I would look forward to consulting closely with Congress, and collaborating with my fellow Commissioners, on crafting policies to make further progress in extending service to all Americans.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO  
JULIUS GENACHOWSKI

*Question 1.* Thank you for your commitment to work with my office on USF. In Alaska, our companies—both traditional incumbents and competitive carriers—are using a wide variety of technologies to deliver universal service. That has helped Alaska to bring modern telecommunications to all parts of Alaska. Will you ensure that technological and competitive neutrality remains a cornerstone of our universal service policies?

Answer. As you note, a variety of technologies and carriers today bring communications to individuals in Alaska and indeed to communities throughout the Nation. In general, I am energized by the prospect of new technologies and new entrants providing essential services to consumers at affordable rates. If confirmed, I look forward to learning more about technological and competitive neutrality in connection with the full range of universal service programs, including the High Cost Fund, the Lifeline and Linkup programs, the E-Rate, the Rural Health Care program, funds providing access to individuals with disabilities, and other initiatives. Going forward, I look forward to working with you and the Committee on universal service issues in order to ensure the program's long term success and viability and to achieve the goals Congress envisioned when it enacted the provisions of the law.

*Question 2.* The FCC has recognized that the Nation's tribal lands, including Alaska's native regions, are in special need of universal service support to continue to

improve the telecommunications infrastructure in those areas. Will you commit to continuing to maintain this special focus on tribal lands and Alaska native regions?

Answer. Yes. I also look forward to working with you to learn more about Alaska's unique needs relating to its native regions.

*Question 3.* I want to ask about improving broadband. In Alaska, many of our communities today can only be reached over satellite. I hope that, as the FCC considers how to define broadband and its policies for advancing broadband, it keeps in mind that some parts of the country are still not connected by fiber to the national backbone. Can you assure me you would do so?

Answer. Yes. Even as NTIA and the Rural Utilities Service implement the broadband grant programs as enacted earlier this year in the American Recovery and Reinvestment Act, to extend broadband service to parts of the Nation that remain unserved and underserved, large portions of rural America, particularly in rural States such as Alaska, will not see fiber builds extend to their most remote regions. I am very interested in the role that wireless and satellite-based services can play in these very remote regions in providing broadband access to consumers. If confirmed, I assure you that I will remain mindful of this reality and look forward to working with you and the Committee as we look at broadband issues in the future.

*Question 4.* I understand from rural incumbent Alaska telephone companies and their consumers that the existing interstate universal service system and regulatory interconnection framework has resulted in the provision of high-speed Internet service availability to large portions of rural customers served by rural incumbent carriers throughout the United States. And I understand that the results in these rural areas is in stark contrast to the availability of high speed broadband in rural areas of the Nation where incumbent telephone companies are not subject to the same rules governing universal service and interconnection. Are you familiar with this? Do you know why rural areas served by rural incumbent carriers have a high degree of high-speed broadband availability while other rural areas do not?

Answer. I am not familiar with the situation you describe but, if confirmed, look forward to being briefed by expert staff at the agency to better understand this issue and the rationale, if any, of the differing rules.

*Question 5.* Will you commit to provide this Committee with a report within 120 days after you arrive at the FCC that gives us specific information about the availability of high speed broadband in rural areas of each state, highlighting where the incumbent carrier is a rural telephone company subject to one set of universal service and interconnection rules, and contrasting the results in those areas to rural areas where the incumbent telephone carrier is not classified as a rural carrier and is subject to other universal service and interconnection rules?

Answer. In the American Recovery and Reinvestment Act, Congress provided funding for broadband grants to extend service to unserved and underserved areas. Moreover, Congress also provided funding to implement the mapping of broadband service in the country. The FCC, for its part, has revised its data collection rules for carriers and will be obtaining more and better data about broadband service. While I would like to provide you with the information you seek in the time-frame you desire, it is difficult to commit to such a schedule without knowing the current state of information at the agency or the operational time-frame for achieving the objectives of the recently funded provisions. Please know that I believe that this is exactly the type of information the agency must possess in order to make smart policies. If confirmed, I assure you that I will endeavor to provide you and the Committee with as much relevant information as possible, as soon as possible, upon which you and other policymakers depend.

*Question 6.* Companies now take stringent measure to protect the privacy of their consumers. However on-line privacy continues to be a concern for all Americans. When we go on-line, we would like to have peace of mind that our personal information is not being misused. The technology exists to determine where customers are going on the Internet and there are companies who would like to use and monetize this information. Shouldn't industry be encouraged to adopt and implement "best practices" for consumer privacy? Doesn't it make sense to focus on all providers who have access to consumer information holistically?

Answer. Yes, I believe that privacy is an extremely important issue for consumers. There are various provisions of the Communications Act addressing privacy rules for telephone, cable, and wireless companies that cover many, but not all, aspects of a consumer's communications use. I also agree that industry could be well served by adopting and implementing "best practices" for consumer privacy. Companies could potentially earn the important trust of consumers if they adhere to a voluntary code of electronic ethics embracing best privacy practices. In addition, as

Congress looks into this issue and potentially considers omnibus privacy legislation, if confirmed, I would ensure that the FCC is available as a resource to you and the Committee.

*Question 7.* As you know, in September 2005, the FCC adopted a set of net neutrality principles explicitly allowing broadband providers to take reasonable steps to prevent unlawful activity such as piracy or theft of copyrighted content over their networks. The Internet has clearly become a vehicle for some type of criminal behavior. I am interested in knowing that it is your intention to confirm and adhere to this policy during your tenure as FCC Chairman.

Answer. If confirmed, I intend to confirm and adhere to this policy. I agree with the existing FCC precedent that net neutrality is about protecting the right of consumers to access *lawful* content, services and applications of their choice.

I believe in the importance of enforcing Federal law on the Internet, including copyright and intellectual property laws.

Illegal copyright infringement is a threat to our economy, with harm measured in the billions of dollars, representing lost wages and lost jobs for American workers. It is a threat to the creativity that our copyright laws are designed to protect and encourage, and a threat to a significant contributor to our economy and U.S. global competitiveness.

It is vital that illegal conduct be curtailed on the Internet. I do not interpret the goals of net neutrality as preventing network operators from taking reasonable steps to block unlawful content.

*Question 8.* Satellite providers to Alaska are concerned that they will be exempted from the national broadband plan. It is important as we go forward the FCC recognize the importance of satellite to help fill the backhaul which is next to impossible to provide without major investment in satellite technology. Do you support the need for the Commission, NTIA, and RUS to be able to support deployment of broadband in any form needed?

Answer. I support the need for the Commission, NTIA, RUS, and other branches of government to support the deployment of broadband in the appropriate form. I recognize that for many parts of the country this can and should include satellite technology.

