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Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, it is a privilege to appear before you this morning. It was exactly one year ago—December 12, 2012—that I last testified in front of this Subcommittee. Much has happened since then. Most notably, we have lost two colleagues and gained two new ones. Chairman Wheeler and Commissioner O’Rielly have already gotten off to a strong start, and I am pleased that we once again have a full complement of Commissioners to tackle the wide range of challenges in front of us.

From making more spectrum available for mobile broadband to facilitating the nation’s transition to an all-IP future, from modernizing our media regulations to ensuring that our universal service reforms hasten rather than impede broadband deployment in rural America, our work is critical to our nation’s economic future and our people’s quality of life. And we have no time to waste. That is why the Commission must reform its processes and become more nimble. We should be an ally rather than an obstacle to the innovators who are transforming our economy and our society at an ever-increasing rate.

Over the course of the past year, we have made progress in many areas. But there is much more work to be done. In my testimony this morning, I will touch on some of the issues I find most pressing.

I. Spectrum

Perhaps the most important and daunting challenge the Commission faces is the looming spectrum crunch. We therefore continue to concentrate on implementing the responsibilities that Congress entrusted to us in the Middle Class Tax Relief and Job Creation Act of 2012, often called the Spectrum Act. There, Congress tasked the Commission with, among other things, getting more spectrum into the commercial marketplace and facilitating the establishment of a nationwide, interoperable public safety broadband network.

Incentive Auction.—The incentive auction is the Commission’s best opportunity to push a large amount of spectrum well-suited for mobile broadband into the commercial marketplace. And as the Commission moves forward on incentive auctions, I believe that five principles should guide our work. *First*, we must be faithful to the statute. It is our job to implement this legislation, not to rewrite it to conform to our policy preferences. *Second*, we must respect the laws of physics. Our band plan and approach to repacking must work from an engineering perspective. *Third*, we must be fair to all stakeholders. This is especially important because the incentive auction will fail unless both broadcasters and wireless carriers choose to participate. *Fourth*, we must keep our rules as simple as possible. The broadcast incentive auction is inherently complicated; unnecessary complexities are likely to deter participation. And *fifth*, we need to complete this proceeding in a reasonable timeframe. Prolonged uncertainty is not good for broadcasters or wireless carriers.

Speaking of that last point, I am disappointed that there was not a clear path to holding a successful incentive auction by the end of 2014. I accordingly support Chairman Wheeler’s announcement setting the middle of 2015 as our new target and applaud him for issuing a schedule to meet that goal. It is more important to get the auction done right than to get it done right now. The Chairman’s measured approach is particularly appropriate given that we only have one shot. If, for

example, any part of our software were to fail during the incentive auction—like another government website that shall not be named—the Commission, by law, wouldn't get a second bite at the apple. That is why we must take the time and the steps necessary to subject our software to rigorous testing.

My greatest worry about the incentive auction, however, is not with the technology. It is about participation. In order for the incentive auction to be successful, we will need robust participation by broadcasters and wireless carriers. But right now, I am concerned that the Commission will make unwise policy choices that will deter participation in both the reverse and forward auctions.

On the reverse auction, the Commission should not deter broadcaster participation through a complicated “scoring” scheme. My position on this is simple. Prices paid to broadcasters should be determined by the market. The Commission should not set them by administrative fiat. Any attempt to restrict payments to broadcasters will prove to be penny-wise and pound-foolish. Indeed, without sufficient broadcaster participation, the entire incentive auction will fail.

And on the forward auction, the Commission should not limit carriers' ability to participate, such as by setting a spectrum cap or narrowing the spectrum screen despite the significant competition that exists in the wireless market. The inevitable effect of such a policy would be less spectrum reallocated for mobile broadband, less funding for national priorities, and an increased chance of a failed auction.

Another issue that will impact participation in the forward auction is the size of the geographic licenses to be offered. While our NPRM proposed using Economic Areas (or EAs), I am worried that staying this course would make it too difficult for many small carriers to participate in the auction, and our goal should be for as many carriers as possible to bid in the auction, whether they be nationwide, regional, or rural. I am therefore pleased to see that parties are coming forward with alternative proposals for license sizes, such as the newly coined “partial economic areas.” Should these proposals prove to be technically feasible, I believe that they deserve serious consideration.

Of course, it is important to remember why it is so vital to hold a successful incentive auction. It's not just about making more spectrum available for mobile broadband, critical as that objective is. A successful incentive auction will also provide money for key national priorities, such as the First Responder Network Authority's (FirstNet's) build out of a nationwide, interoperable public safety broadband network; Next Generation 911 implementation; public safety research; and deficit reduction.

As we move forward in this proceeding, I look forward to continuing to receive feedback from Congress, particularly Members of this Subcommittee. Given your key role in crafting this legislation, it is vital that the Commission keep open the lines of communication with you. It is also important for us to coordinate closely with Canada and Mexico to address issues involving border areas. Absent such coordination, we will have neither a timely nor successful auction.

H Block.—In January, the Commission will hold its first major spectrum auction in nearly six years when we auction the H Block, 10 MHz of long-fallow spectrum (1915–1920 MHz and 1995–2000 MHz) identified by Congress in the Spectrum Act. I am pleased that we did not saddle this spectrum with burdensome and unnecessary conditions. Instead, we outlined straightforward and flexible rules for H Block licensees. I hope that this approach will serve as a model for future auctions. If we are able to garner at least \$1.56 billion for this spectrum, which used to be viewed as almost worthless, I believe that the auction will be an important success. It will make available 10 MHz of additional spectrum for mobile broadband. It will provide a substantial down payment to FirstNet for construction of a nationwide, interoperable public safety broadband network. And it will demonstrate to the marketplace that the Commission still has both the will and ability to hold a successful auction.

AWS-3.—The Spectrum Act also directs the Commission to auction off 25 MHz of spectrum adjacent to AWS-1, 2155–2180 MHz. This spectrum ideally should be paired with another 25 MHz block adjacent to AWS-1, 1755–1780 MHz, which is currently occupied by the federal government. These bands are already internationally harmonized for commercial use, which means deployment will be

swifter and cheaper than other options. A successful auction of this spectrum would make additional spectrum available for mobile broadband and provide additional funding for the important national priorities I have described above.

I am pleased that the federal government appears to be making progress on a plan to move operations out of this spectrum and into other bands. For example, the Department of Defense and the National Association of Broadcasters recently agreed on a proposal to share broadcast auxiliary service spectrum at 2025–2110 MHz, thus allowing for certain Department of Defense operations to be relocated from the 1755–1780 MHz band.

As we go forward, I believe that our goal should be to clear the 1755–1780 MHz band. If our goal is to incentivize investment in wireless networks, nothing beats clearing. That’s one reason that the Spectrum Act puts a thumb on the scale for clearing and allows sharing only if clearing is “not feasible because of technical or cost constraints.”

5 GHz.—Just as licensed spectrum is important to a successful spectrum strategy, so too is unlicensed. And that brings me to one last piece of spectrum I’m excited to discuss: the 5 GHz band. I thank the Subcommittee for its leadership in identifying and drawing attention to this important spectrum.

As I testified before the Subcommittee last December, the 5 GHz band is “tailor made” for the next generation of Wi-Fi. Its propagation characteristics minimize interference in the band and the wide, contiguous blocks of 5 GHz spectrum allow for extremely fast connections, with throughput reaching 1 gigabit per second. The technical standard to accomplish this, 802.11ac, already exists, and devices implementing it are already being built. All of this means we can rapidly realize these benefits: more robust and ubiquitous wireless coverage for consumers; more manageable networks for providers; a new test bed for innovative application developers; and other benefits we can’t even conceive today.

Following the instructions set forth by Congress in the Spectrum Act, the Commission launched a rulemaking earlier this year to make available up to 195 MHz of additional spectrum in the 5 GHz band for unlicensed use. We also made proposals to allow for greater utilization of those segments of the 5 GHz band already available for unlicensed use.

Now is the time for us to move from offering proposals to taking action. This past summer, I urged the FCC to move forward with its 5 GHz proceeding in stages, and I reiterate that call today. For example, the Commission should move promptly to modify the service rules for the U-NII-1 band. By raising the power limits on the U-NII-1 band and allowing for outdoor use, we can make this band attractive for commercial Wi-Fi while safeguarding incumbent users. Likewise, we should act quickly to add 25 MHz to the U-NII-3 band. Among other things, this measure would reduce certification costs for companies manufacturing devices in this band. Given the growing congestion in the 2.4 GHz band (which consumers commonly rely upon for Wi-Fi access), we should not let a few difficult issues involving the 5 GHz band delay us from making progress on the easier ones.

II. Wireless Infrastructure

Removing regulatory barriers to the deployment of wireless infrastructure is another priority for the Commission. Building next-generation wireless broadband networks can present business and technical challenges. But complying with the numerous federal, state, and municipal regulations covering a wide range of physical infrastructure, from towers to small cells, can make deployment difficult or even prohibitive. To be sure, some oversight is necessary to ensure sound engineering and safety. But many procedures simply frustrate, rather than facilitate, deployment. Making the permitting process expensive and unnecessarily burdensome ultimately harms consumers who are denied better and cheaper wireless services.

I am therefore pleased that the Commission moved forward in September with a Notice of Proposed Rulemaking seeking comment on a variety of ideas for reducing regulatory barriers to the

construction of wireless infrastructure. In particular, I'd like to highlight three of them in my testimony this morning.

First, we should make clear that local moratoria on the approval of new wireless infrastructure violate section 332 of the Communications Act. The FCC has already put in place a shot clock for localities to address tower siting permits and other building applications. Prohibiting moratoria would address the tactic some localities have used to evade those deadlines by adopting an indefinite "time out" on the approval of wireless infrastructure.

Second, we should modernize our rules to exempt distributed antenna systems (DAS) and small cells from our environmental processing requirements, except for rules involving radiofrequency emissions. Given their small size and appearance, there is no reason to subject DAS and small cells to the same environmental review as a 200-foot tower. We should similarly update our historic preservation rules, which add yet more regulatory requirements, in order to facilitate the deployment of DAS and small cells. It bears noting that the greater the deployment of wireless infrastructure like this, the less reliance carriers (and hence consumers) must place on larger, "macro" cell sites and the less power networks and devices consume.

Third, we should address what happens when a local government doesn't comply with our shot clock. Currently, if a city does not process an application within 150 days, the only remedy is to file a lawsuit. This increases delay and diverts investments away from networks. To fix this problem, we should supplement our shot clocks with a backstop: If a locality doesn't act on a wireless facilities application by the end of the time limit, the application should be deemed granted. (As a legal matter, I believe the FCC has this authority following the Supreme Court's decision this past May in *City of Arlington, Texas v. FCC*.)

There are also other steps that the Commission can take to hasten the deployment of wireless infrastructure. For example, we have sought comment on clarifying the scope and meaning of section 6409(a) of the Spectrum Act, which prohibits state and local governments from denying certain collocation requests, and I hope that we make appropriate clarifications in the near term. Also, we are looking for ways to expedite the deployment of infrastructure to implement positive train control, as required by the Rail Safety Improvement Act of 2008.

III. The IP Transition

Today, almost every segment of the communications industry is competing to offer newer, faster, and better broadband services. Telecommunications carriers are upgrading DSL with IP-based technology and fiber. Cable operators have deployed DOCSIS 3.0 to increase bandwidth tenfold. Satellite providers are offering 12 megabit packages in parts of the country that never dreamed of such speeds. And millions of Americans—many of whom don't subscribe to fixed broadband service at home—now have access to the Internet on the go using the mobile spectrum the Commission auctioned back in 2006 and 2008. Indeed, according to the State Broadband Initiative of the National Telecommunications and Information Administration, 98.8 percent of Americans had access to high-speed broadband as of December 2012. The common thread knitting all of these changes together is the Internet Protocol (IP), a near-universal way to route and transmit data.

What are the results of all this competition? More choices for consumers, and major challenges to old business models. Thirty years ago, American consumers had access to one network largely run by one carrier, Ma Bell. Today, Americans are fleeing the copper network. 33.6 million Americans dropped their copper landlines over the past four years. About one in seven households with plain old telephone service over the public-switched telephone network (PSTN) dropped their service last year alone. And competition is rampant: 99.6 percent of Americans can choose from at least three wireline competitors, and 92 percent can choose from *10 or more*. The evidence also shows that consumers are in fact

exercising that choice: Interconnected VoIP providers added 14.6 million subscriptions over the last four years. Essentially, voice is becoming just another application riding over the Internet.

Yet the Communications Act was last amended when the Internet was still in its commercial infancy. And the Act still places telephone carriers in one silo, wireless providers in another, satellite operators in a third, and cable companies in a fourth. With the advent of IP, these legacy divisions no longer reflect the state of technology nor the dynamic competition that's now occurring from these unexpected corners. Indeed, the Commission did not seriously start begin looking at over-the-top competitors until seven years after Congress passed the 1996 Act—and although then-Chairman Powell opened the door, we still haven't walked through it.

None of this is news to the Subcommittee. Just last week, Committee Chairman Upton and Subcommittee Chairman Walden announced the launch of a multi-year effort to examine how to modernize the Communications Act to reflect the realities of a 21st century marketplace. Chairman Upton called for laws that “make sense for today but are also ready for the innovations of tomorrow,” and Chairman Walden stated the “goal is to make sure this critical sector of our economy thrives because of the laws around it, not in spite of them.” I welcome the Committee's decision to reexamine and update the Act, and I stand ready to assist in whatever way I can.

I hope that the Committee's recognition of the changing marketplace will encourage the FCC to take action even sooner on the IP Transition. The American people are ahead of Washington on this issue—they are choosing IP-enabled services at an amazing rate. Whatever policymakers do, our country's transition to an all-IP future *will* happen. But what we at the Commission do will have a dramatic impact on the speed and success of that transition.

There are signs that we've already started off on the right foot. Two years ago, the FCC's Technological Advisory Council under now-Chairman Wheeler's leadership recommended that we sunset the public switched telephone network in 2018. In July 2012, I called on the FCC to create an IP Transition Task Force that would help us take a holistic approach to the IP Transition and focus our deliberations on a task that so desperately needs to be done. Last December, Chairman Genachowski created such a task force. Its labors will begin to bear fruit just next month when we consider an order with recommendations from the task force on how to conduct a diverse set of experiments.

The most important experiment to start with, in my view, is an All-IP Pilot Program. Such a program would allow companies to choose a discrete set of wire centers where they could turn off their old time-division-multiplexed electronics and migrate customers to an all-IP platform. Moving forward with an All-IP Pilot Program would send a powerful message to the private sector that we intend to embrace the IP Transition through a data-driven process. We would signal that we won't force carriers to invest in both old and new networks forever. We would move closer to the day when carriers will be able to focus exclusively on investing in the networks of tomorrow rather than maintaining the networks of yesterday.

An All-IP Pilot Program is important because predictions are no substitute for hard facts. A process conducted on paper isn't as data-driven as a real-live experiment. To quote Blair Levin, the father of the National Broadband Plan, an All-IP trial would be “worth a thousand pleadings.”

And conducting a trial run before implementing big changes is nothing new for the FCC. Before we turned off analog broadcasting, then-Commissioner Copps had the good idea of testing the concept. That experiment, which was held in Wilmington, North Carolina, provided valuable feedback and helped make the nationwide DTV transition a success. Similarly, the FCC launched a rural healthcare pilot program in 2007. The success of that pilot led to the creation of the Healthcare Connect Fund this past year. Other examples abound, ranging from spectrum sharing to VoIP numbering.

What is more, the All-IP Pilot Program isn't an issue that divides the left from the right, Republicans from Democrats, or urban America from rural America. Endorsements range from AT&T to

the National Cable and Telecommunications Association, from Bandwidth.com to Alcatel-Lucent. Organizations like the NAACP, the National Urban League, the Rainbow PUSH Coalition, the National Grange, and the National Farmers Union also want a pilot program. So do advocacy groups like the Minority Media and Telecommunications Council, the Asian American Federation, the League of United Latin American Citizens, Women Impacting Public Policy, the U.S. Chamber of Commerce, and the American Consumer Institute.

So how should we structure this experiment? Let's start with some basic principles. *One*, carrier participation in the All-IP Pilot Program should be voluntary, and pilot sites should be located in states that are ready and willing to embrace the IP Transition. *Two*, tests should ideally be conducted in a variety of places that represent our country's diverse geography and population. We'll learn the most from the pilot program if there are sites in urban, suburban, and rural communities. And we have to make sure that low-income and minority communities are included, because the IP Transition will bring benefits to everyone. *Three*, no one should be left behind, so residential customers with fixed telephone service today should continue to have voice service available to them even when that service is based on IP. And business customers should know in advance what IP-based services will replace what they currently have. And *four*, we must be able to evaluate the All-IP Pilot Program in order to figure out what worked and what didn't. This will help us make the broader IP Transition. With empirical data in hand, we can reject the rhetoric in favor of reason.

Of course, preparing for the IP Transition does not end with conducting an All-IP Pilot Program. We also need to take a hard look our regulations in light of the coming transition, if for no other reason than that the private sector needs flexibility to make investment decisions based on consumer demand, not outdated regulatory mandates. Accordingly, I believe four principles should shape our approach to the transition.

First, we must ensure that vital consumer protections remain in place. When consumers dial 911, they need to reach emergency personnel; it shouldn't matter whether they are using the PSTN, a VoIP application, or a wireless phone. The same goes for consumer privacy protections and antifraud measures like our slamming rules. *Second*, we must not import the broken, burdensome economic regulations of the PSTN into an all-IP world. No tariffs. No arcane cost studies. And no hidden subsidies that distort competition to benefit companies, not consumers. We must also repeal the old-world regulations such as retail tariffing that no longer make sense in a competitive all-IP world. While they remain on the books, wholesale expansion to IP may just be too tempting. *Third*, we must retain the ability to combat discrete market failures and protect consumers from anticompetitive harm. *Fourth*, we must respect the metes and bounds of the Communications Act and not overstep our authority.

In truth, the work of the Committee to review the Communications Act underscores the importance of the FCC embracing the IP Transition. Over the next two years, if we conduct an All-IP Pilot Program and take stock of the rules that should stay and those that should go in an all-IP world, we will be able to inform Congress where we can improve our regulations ourselves and where we may need legislative direction.

IV. The Universal Service Fund

Although the Communications Act of 1934 is not perfect, it does make an important promise in its very first sentence: Congress created the Federal Communications Commission to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."

We at the FCC need to take this promise seriously. We must recognize that broadband operators in rural America today face unique challenges. Unlike the urban environment, rural carriers must carefully plan their infrastructure over a ten- or twenty-year time scale if they are to recover their costs.

Congress recognized this in section 254 of the Act, embedding the statutory command that universal service support be “predictable.”

We can argue over the proper size of the Universal Service Fund, but all of us should be able to agree that given its size, it should be distributed consistent with the law and common sense. For example, a constant stream of reforms every year or two cannot give businesses and investors much certainty. Instead, the Commission needs a long-term strategy and must sometimes be patient before demanding more from the industry.

QRA Benchmarks.—Take the quantile regression analysis (QRA) benchmarks created by the Commission in the 2011 *Universal Service Transformation Order* and implemented by the Wireline Competition Bureau in the 2012 *Benchmarks Order*. The QRA benchmarks are supposed to create “structural incentives for rate-of-return companies to operate more efficiently and make prudent expenditures.” But reality has not caught up with theory. Instead, the QRA benchmarks have resulted in unpredictability and uncertainty, chilling the investment climate and impeding the deployment of next-generation technologies and broadband services to rural Americans. As the Obama Administration’s Department of Agriculture told the Commission earlier this year, “demand for [Rural Utility Service] loan funds dropped to roughly 37% of the total amount of loan funds appropriated by Congress in [fiscal year] 2012.”

Now, I am pleased that the FCC was able to implement some reforms to the QRA in February in a decision with the punchy nickname of the “*Sixth Recon Order*.” That order let carriers balance their capital investments against their operating expenses (rather than analyzing each—and possibly penalizing carriers for either—separately). And the Wireline Competition Bureau recently recognized that implementing a whole new regression model in 2014 would be infeasible given our slow progress in collecting accurate maps of each carrier’s study area.

But I still have my doubts about the utility of the QRA benchmarks as implemented. It is important to remember that they do not save money for the Universal Service Fund, but merely redistribute support from one set of carriers to another. The 2014 benchmarks are likely to impact significantly more carriers than the 2013 benchmarks, all of which are based on flawed data and inaccurate maps. And rural carriers still cannot know whether they will be able to recover investments made today since the relevant benchmarks for those investments won’t be known until 2015. Indeed, if a rural carrier below the cap chooses to reinvest any additional support it receives in broadband, it risks pushing itself over the cap in future years, thus mitigating any benefit from that additional support. In short, the Commission needs to think long and hard about the QRA benchmarks.

Connect America Fund.—Aside from the benchmarks, there is much work still to be done to follow up the *Universal Service Transformation Order*. For example, that order reoriented the Fund to support broadband, rather than just telephone service. And yet, the Fund still only supports telephone service in areas served by rate-of-return carriers. It’s time for the Commission to start moving forward with a Connect America Fund for rate-of-return carriers. This step would recognize that line loss in rural America is real and that direct support for broadband-capable facilities, within the existing budget, is critical.

We’re in a better position to address the needs of rural America in areas served by price-cap carriers. The Wireline Competition Bureau, for example, has been doing yeoman’s work in modelling the costs of deploying a next-generation network. But there’s still more to do. The FCC decided that reverse auctions for universal service support should occur in areas where price-cap carriers decline to accept Connect America Fund support, but the Commission has not yet moved forward on that front since adopting the *Universal Service Transformation Order*. I hope we do so soon. No part of rural America should miss the broadband revolution while waiting for the regulatory dust to settle.

E-Rate.—I am also hopeful that in the next few months, we will reform the Fund’s schools and libraries program, better known as E-Rate. Established at the direction of Congress 16 years ago, the E-Rate program is intended to bring advanced services to schools and libraries across America. In many ways, the program has been a success. Internet access in public schools has almost tripled, and speeds have grown alongside availability. Indeed, a 2010 FCC survey showed that 22 percent of respondents were “completely” satisfied and another 58 percent were “mostly” satisfied with the bandwidth they’re getting.

But like all federal programs, E-Rate has had its share of difficulties. For applicants, the funding process from start to finish can stretch for years. Additionally, to navigate arcane steps like Form 470 competitive bidding, Form 471 Program Integrity Assurance review, and the Form 500 commitment adjustment process, schools must enlist specialized E-Rate consultants, draining scarce dollars away from students and technology. For parents, the process is so opaque that they cannot know ahead of time how much funding their school might receive and cannot track whether it is actually spent on enriching the education of their kids. For school boards, the priority system (under which things like paging and Blackberry services for administrators get prioritized over connecting a classroom to the Internet) distorts their spending decisions since some services are discounted by up to 90 percent while others may or may not receive any discount in a given funding year. And for everyone with a phone line, and who hence contributes to the program, it’s hard to tell what bang we’re getting for our universal service buck—there is no meaningful transparency with respect to E-Rate spending and no real information on the impact of that spending.

There is a better way—one which would focus the E-Rate program on children. To create a student-centered E-Rate program, we need to fundamentally rethink how we structure the program. That means starting each school and library with an upfront allocation of funding so they know how much they can spend. That means cutting the red tape so that the initial application is just one page and there’s only one other form needed before funds are disbursed. That means targeting funding at next-generation technologies like broadband and Wi-Fi while still letting local schools set their own priorities. And that means publishing all funding and spending decisions on an easily accessible, central website so that every parent, every journalist, every government watchdog, every American can see just how E-Rate funds are being spent.

The student-centered E-Rate program I have outlined would fulfill E-Rate’s statutory mission of bringing advanced services to schools and libraries across the country. It would reduce waste, fraud, and abuse in the program and increase transparency and accountability. And it would free an extra \$1 billion for next-generation services in its first year (\$600 million of which is currently spent each year on basic telephone service and other outdated technologies), all without collecting an extra dime from the American people. Given the potential savings at hand, it would be premature to increase the program’s budget at this time—and under no circumstances should we do so without finding corresponding new savings elsewhere in the Universal Service Fund. We cannot ask Americans to pay even more in their monthly phone bills, especially when median household income in this country is lower than it was in 2007.

V. Media

The media landscape has undergone revolutionary change in the last few decades. But the FCC’s rules have not kept pace with the realities of the marketplace. That is why, since joining the Commission, I have advocated updating our regulations on a variety of fronts while at the same time preserving the Commission’s commitment to the core values of competition, diversity, and localism.

Cable Forbearance.—The video market has changed dramatically since the Cable Act became law in 1992. Back then, cable incumbents dominated the multichannel video programming distributor (MVPD) market with a 95 percent market share. The vast majority of Americans could not choose

among competing MVPDs. There were only about 70 cable programming networks. And over-the-top video providers like Netflix did not exist.

Fast forward (a term whose origins betray its age) to today. Due to the entry of satellite and telecommunications companies into the video market, almost all Americans now have a choice of three MVPD providers. Over one-third of Americans can choose among four. The market share of incumbent cable operators has dropped below 55 percent of video subscribers. There are now over 500 cable and satellite programming networks. And over-the-top video providers have entered the market and are transforming the way that Americans consume content. Right now, for example, Netflix has more customers than Comcast, the largest cable operator in the country, and more than every other cable operator in the country combined. Indeed, due to the prevalence of over-the-top video, more Americans are starting to forego video bundles offered by MVPDs altogether and instead just rely on a broadband connection and a broadcast antenna.

Despite this revolutionary change, the FCC's regulatory approach to cable too often remains mired in the past, and we could use some help from Congress to remedy the situation. Currently, section 10 of the Communications Act allows the FCC to "forbear from applying any regulation or provision of the [Communications] Act to a telecommunications carrier or telecommunications service, or a class of telecommunications carriers or services." Over the years, forbearance has allowed the FCC to remove outdated regulatory burdens from telecommunications carriers. This, in turn, has encouraged infrastructure investment and broadband deployment. That's great, but we currently can't take these same steps with respect to laws and regulations aimed at MVPDs.

As one who believes in regulatory parity, this does not make sense. The video industry is undergoing the same transformation that we are witnessing in the telecommunications sector. Technology is turning voice and video into applications transmitted over the Internet. Former monopoly providers are facing intense competition as we move to an all-IP world. So I believe that the FCC should have the same authority to relieve MVPDs from obsolete rules as we currently have for carriers.

Congress, of course, would need to determine how best to structure cable forbearance. Would such forbearance authority extend any provision of the Communications Act or just those found in the Cable Act? Would any particular provisions of the Act be exempted from such forbearance authority until certain conditions are met, as is done in Section 10(d) with respect to telecommunications forbearance? These are questions that I would encourage you to consider as this Committee reexamines the Communications Act.

AM Radio.— More than one year ago, I proposed that the Commission launch an AM Radio Revitalization Initiative. This past October, it became a reality. It's been over two decades since we last comprehensively reviewed our AM radio rules. Over that time, the AM band has struggled. Interference problems, declining listenership, financial challenges for minority-owned broadcasters, and other factors have brought the band low. But millions of Americans—myself included—still rely on and believe in AM radio. So this initiative is close to my heart.

The Commission's NPRM embraced a sensible two-stage strategy for improving AM radio service. First, we proposed several ways to give AM broadcasters relief in the short term. For instance, we suggested eliminating the "ratchet rule," which effectively prevents AM broadcasters from improving their facilities. We teed up modifications to the daytime and nighttime community coverage rules for existing AM stations to better help them reach their listeners. Perhaps most importantly, we sought public input on letting AM stations apply for new FM translators. I'm the first to acknowledge that these and other proposals will not be an immediate panacea for the difficulties confronting the AM band. But based on the conversations I have had with AM broadcasters across the country during the past year, I am convinced that they can make a substantial, positive difference to numerous AM stations. Second, we also invited the American public and stakeholders to share their proposals for the long-term future of the

AM band. What steps can the Commission take so that there will be a vibrant AM radio service ten or fifteen years from now?

I am optimistic that broadcasters, engineers, and anyone else with an interest in AM radio will participate in our Revitalization Initiative and submit creative ideas to the Commission. Then, after the comment cycle closes in February, I hope that the Commission will act quickly to implement an initial set of reforms to help the AM band.

Quadrennial Review.—The Commission is required by law to review its media ownership regulations every four years. This cycle’s review began in September of 2009 as we announced a series of workshops to begin gathering information from various stakeholders. Now, more than four years later, our review is still not complete. The time has come for us to launch our next review, but we have not yet finished the last one. This is unacceptable.

I hope that we will we move forward quickly to bring the current quadrennial review to a close and make sensible reforms to our rules so that they reflect the marketplace realities of 2013 rather than those of 1975. For example, I supported former Chairman Genachowski’s proposal to eliminate the newspaper-radio and radio-television rule. I also believe that the time has come to eliminate the newspaper-television cross-ownership rule. In this day and age, if you want to operate a newspaper, we should be thanking you, not placing regulatory barriers in your path. I am a realist and understand that whatever reforms we end up implementing will not go as far as I might prefer. But I do believe that we should be able to find common ground and move forward with some sensible reforms.

I continue to have serious concerns, however, about proposals that are under discussion to make Joint Sales Agreements (JSAs) and/or Shared Services Agreements (SSAs) attributable under our local television ownership rule. As broadcasters’ share of the advertising market has shrunk in the digital age, television stations must be able to enter into innovative, pro-competitive arrangements in order to operate efficiently. JSAs and SSAs allow stations to save costs and to provide the services that we should want television broadcasters to offer.

In my home state, for example, a JSA between two Wichita stations enabled the Entravision station, a Univision affiliate, to introduce the only Spanish-language local news in Kansas. Across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting not only led to expanded news programming in that market but also nearly \$3.5 million in capital investment. Some of that money was spent upgrading the stations’ Doppler Radio system, which probably saved lives when a devastating tornado destroyed much of Joplin in 2011.

For stations in smaller markets like Wichita and Joplin, the choice isn’t between JSAs or having both television stations operate independent news departments. Rather, the real choice is between JSAs and having at most one television station continue to provide news programming while the other does not. If the FCC effectively prohibits these agreements, fewer stations in small-town America will offer news programming, and they will invest less in newsgathering. And the economics suggest that there likely will be fewer television stations, period.

UHF Discount.—Speaking of our media ownership rules, the Commission moved forward in September with an NPRM proposing to eliminate the UHF discount portion of our national television ownership rule. Given the transition from analog to digital television, there is a strong case for ending the UHF discount; UHF signals are not inferior to VHF signals in the digital world. Unfortunately, the Commission’s NPRM went about it the wrong way.

We should not modify the UHF discount without simultaneously reviewing the national audience cap, which currently stands at 39 percent. The NPRM recognized the interdependent relationship between the national audience cap and the UHF discount, acknowledging that “elimination of the UHF discount would impact the calculation of nationwide audience reach for broadcast station groups with UHF stations.” Or, to put the matter succinctly, eliminating the UHF discount would substantially tighten

the national ownership limit. For example, one company that is now more than 19 percentage points under the cap would be only three points below the cap if the UHF discount were eliminated.

I was therefore disappointed that we proposed to end the UHF discount without asking whether it is time to raise the 39 percent cap. Indeed, this step is long overdue, notwithstanding *any* change to the UHF discount. The Commission has not formally addressed the appropriate level of the national audience cap since its 2002 Biennial Review Order, and it has been about a decade since the 39 percent cap was established. As I mentioned earlier, the media landscape is dramatically different today than it was then. I've spoken a lot about the importance of reviewing our rules to keep pace with changes in technology and the marketplace, and I wish that the NPRM had addressed the national television rule in a comprehensive manner.

I also had serious concerns about how the NPRM addressed grandfathering. While I was pleased that the item at least proposed to grandfather existing combinations that would exceed the 39 percent cap if the UHF discount were eliminated as well as combinations that would exceed such a cap because of an application that was currently pending with the Commission, this did not go far enough. In my view, any combination that is in existence or pending with the Commission as of the date the UHF discount rule is eliminated should be grandfathered. Rules should not be effective before they are effective.

Unfortunately, the Commission lost sight of what the NPRM actually did. It only proposed to eliminate the UHF discount. It did not actually end the UHF discount. The UHF discount is still law of the land today and will be every day after until the Commission votes to repeal it. Through its grandfathering proposal, however, the NPRM effectively told the private marketplace to behave as if the UHF discount had already been eliminated, thus treating the rest of the rulemaking process as an empty formality. The practical results of this "sentence first, verdict afterward" approach will be to dampen the market for broadcast transactions and depress station values.

Foreign Investment.—And finally, over a year ago, I called upon the Commission to modernize its approach to foreign investment in broadcasting. And the declaratory ruling we issued at our November meeting takes a solid step in that direction. While I wished we had gone further, by revising our interpretation of Section 310(b)(4) of the Communications Act to eliminate the obsolete *de facto* ban on foreign investment of more than 25 percent in U.S. broadcast holding companies, and inviting broadcasters to submit information for case-by-case reviews of potential ownership structures, the declaratory ruling should invigorate American broadcasting and increase minority ownership.

The Commission recognized earlier this year in its *Second Report and Order* addressing foreign ownership of common carriers that foreign investment can be an "important source of financing . . . innovation, economic growth and job creation" in the telecommunications sector. The same is true for broadcasters. And since joining the Commission, I have heard the same message over and over again when it comes to ownership diversity: The biggest obstacle to minority ownership in the broadcast industry is the lack of access to capital. That is why the Minority Media and Telecommunications Council and 30 other national minority and civil rights organizations told us that permitting additional foreign investment in the broadcasting industry would be "one of the most significant steps the Commission could take" "[t]o reverse the decline in minority broadcast ownership." With an expanded ability to access capital from abroad, minority entrepreneurs will have a better chance of being able to enter into the broadcast industry or expand existing businesses. Indeed, this issue demonstrates how regulation can serve as a barrier to minority ownership and how modernizing our rules can promote diversity.

VI. Modernizing FCC Processes

Before concluding, I would like to touch on a subject that affects all areas of the Commission's work: process reform. This Subcommittee has been a leader on this issue, and I commend your efforts. The Federal Communications Commission Consolidated Reporting Act, for example, would modernize

the Commission's reporting obligations and free up Commission resources to work on other important projects. It passed the House of Representatives unanimously this year, and I hope that it is soon enacted into law. And just this week the bipartisan leadership of the Subcommittee introduced reforms that would set aright the FCC's procedures and improve our long-term performance.

The FCC, however, should not and need not sit still waiting for Congress to act. We should do what we can on our own to improve our internal processes. Our goal should be clear: The FCC should be as nimble as the industry that we oversee. All too often, proceedings at the Commission needlessly drag on for many years. In an oversight hearing last year before this Subcommittee, for example, two Members—one Republican and one Democrat—asked about proceedings that had been pending at the Commission for about a decade. While I am pleased that the agency finally did take action in those two proceedings in the months following the hearing, it shouldn't take inquiries from Congress for the Commission to complete its work. And consumers shouldn't have to wait for years for their complaints to be answered.

The good news is that we are making progress on this front. Commissioners are voting on items more quickly after they are placed on circulation. The time between the adoption and the release of items has decreased, and we have reduced the FCC's backlog. And yet, we still have much room for improvement.

Since taking office, I have proposed a variety of reforms to improve the Commission's performance. We should streamline our internal processes where possible. For example, let's adopt a procedure akin to the U.S. Supreme Court's *certiorari* process for handling applications for review. Let's speed up our processing of smaller transactions. Let's establish more internal deadlines, such as a nine-month deadline for ruling on applications for review and petitions for reconsideration along with a six-month deadline for handling waiver requests. And when we adopt industry-wide rules, let's more frequently use sunset clauses that require us to eventually revisit the wisdom of (and, if necessary, revise or repeal) those rules.

Beyond reforming our rules, we should become more accountable to the public and to Congress about how long it takes the Commission to do its work. One way to do this would be by creating an FCC Dashboard on our website that collects in one place key performance metrics. Let's keep track of how many petitions for reconsideration, applications for review, waiver requests, license renewal applications, and consumer complaints are pending at the Commission at any given time. And let's compare the current statistics in all these categories against those from a year ago, from five years ago, so everyone can see if we are headed in the right direction. If we make it easier for others to hold us accountable for our performance, I'm confident that we would act with more dispatch.

I am pleased that Chairman Wheeler has made process reform a priority. He has asked experienced counsel Diane Cornell to focus specifically on this issue, and I look forward to working with her over the coming months and years. My emphasis on acting promptly is not just about good government. It is also about the impact that the FCC's decisions (or lack thereof) have on our economy. As the pace of technological change accelerates, so too must the pace at the Commission. We can't let regulatory inertia frustrate technological progress or deter innovation.

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As you can see, we have a lot of issues on our plate right now, and the stakes are high. But with a full Commission in place, and by consulting with Congress, I'm confident that we can discharge our responsibilities in a way that will serve the public interest. Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to share my perspective with you. I look forward to answering your questions and continuing to work with you and your staff in the future.