

103

# FCC AUTHORIZATION

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Y 4. EN 2/3: 103-117

FCC Authorization, Serial No. 103-1... NG

BEFORE THE  
SUBCOMMITTEE ON  
TELECOMMUNICATIONS AND FINANCE  
OF THE  
COMMITTEE ON  
ENERGY AND COMMERCE  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

**H.R. 4522**

A BILL TO AMEND THE COMMUNICATIONS ACT OF 1934 TO EXTEND  
THE AUTHORIZATION OF APPROPRIATIONS OF THE FEDERAL COMMU-  
NICATIONS COMMISSION

MAY 26, 1994

**Serial No. 103-117**

Printed for the use of the Committee on Energy and Commerce



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# FEDERAL COMMUNICATIONS COMMISSION'S FISCAL YEAR 1995 AUTHORIZATION

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THURSDAY, MAY 26, 1994

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 2123, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. MARKEY. Good afternoon. I am pleased to welcome Chairman Hundt back to the subcommittee, and to welcome Commissioner Barrett and the two new Commissioners, Rachelle Chong and Susan Ness to our subcommittee this afternoon. It has been almost 1½ years since the Commission has been at full strength, and I want to congratulate our two new Commissioners on your appointments, and I look forward to working with both of you on the various issues of great national importance that will come before this subcommittee this year and in ensuing years.

Today, I will introduce, along with ranking minority member Jack Fields, legislation reauthorizing the Federal Communications Commission for fiscal year 1995 at \$188.4 million. This figure reflects the resources the Commission needs to carry out its mission under the Communications Act. In particular, the Commission is working overtime in recent months to implement legislation this subcommittee has passed, the 1992 Cable Act and the 1993 Omnibus Budget Reconciliation Act, which directed the Commission to establish rules for spectrum auctions and for personal communications services. These rulemakings are historic and demand great care and attention by the Commission. Because of this tremendous burden, I believe this funding level is needed to enable the Commission to fulfill its congressional obligations.

The occasion of a reauthorization hearing also gives the subcommittee an opportunity to review the work of the Commission over the past year, and to look forward to issues the Commission will confront over the next 12 months. I know that the members will address many of these issues in their questions, but I want to make a few observations.

According to my calculations, you, Chairman Hundt, have been on the job for almost exactly 6 months after waiting what seemed like forever to get confirmed. During that time, the Commission has wrestled with access charges, cable rates, rules for PCS, and spectrum auctions. Not surprisingly, no one has been completely happy with all of your decisions. Welcome to Washington. But dur-

ing that same time, I am convinced that you listened and understood the points made to you, that you gave serious thought to the arguments raised, and then you reviewed the record and the law, and reached your conclusion. I think that is all anyone can ask and expect of a conscientious regulator. Commissioners Barrett and Quello have been equally attentive and thoughtful in struggling with these tough issues over the years.

I encourage the two new Commissioners to emulate the work that has been done by you, Mr. Chairman, and by Mr. Barrett and Mr. Quello, because I think that it is a good model for us to now use as we move to a full strength Commission for the first time in years.

I also want to commend the Commission for taking seriously its traditional goal of fostering competition and protecting consumers, both in implementing the 1992 Cable Act and the 1993 Budget Reconciliation Act. As one looks at the potential of PCS, it is not an exaggeration to say that we stand at the edge of a new era of communications. If done right, PCS has the promise of providing competition to cellular, and thereby breaking the cellular duopoly; of providing competition to wireline phone service and eroding that monopoly; and of giving consumers dynamic new services, including revolutionary mobile data applications, that will change the way we work and live. I think the Commission understands that potential. I think it is important that we get on with PCS, and I expect 1994 to be the year that auctions are conducted and that PCS is launched.

In closing, I want to call attention to many positive steps the Commission has taken over the past 6 months. The decision to reenergize the Network Reliability Council demonstrates a commitment to service quality and reliability which I consider very important. The Commission's decision to get more information on the video dial tone applications demonstrates a commitment to make sure that consumers are protected as new investment decisions are made. And the Commission's decisions on implementing the Cable Act demonstrate a commitment to carry out the law and the intent of Congress and to protect consumers.

The next 12 months promise to be equally busy for the Commission, with the Commission finishing PCS and spectrum auctions, and landmark legislation looming on the horizon. The subcommittee will look to the Commission for its expertise to help us write those laws, and its commitment to fully implement them once they are passed.

I would also like to take just a brief moment to introduce the two newest members of the Federal Communications Commission to the subcommittee. We are delighted that they could join us this afternoon to tell us how much they have enjoyed their new jobs over the last 72 hours.

Rachelle Chong is a native of California and attended Lincoln High School in Stockton. She graduated phi beta kappa from the University of California at Berkeley, with a B.A. in 1981 and received her law degree from the Hastings College of Law at Berkeley in 1984. She has practiced law at the law firm of Gram & James in San Francisco since 1987, specializing in communications law.

Susan Ness was born in Elizabeth, New Jersey, and graduated from Rutgers University with a B.A. She received a superior legal education and proper FCC preparation by following in the footsteps of FCC communications greats Charlie Farris, John Fogerty and Ann Jones, graduating cum laude from Boston College Law School in 1974. She earned an MBA from the Watton School at the University of Pennsylvania in 1983.

She has worked as a law clerk at the National Consumer Law Center in Boston and the Harvard School of Public Health, and from 1983 to 1992, she analyzed the communications industry for the American Securities Bank.

We have two superior new members of the Federal Communications Commission. It is our honor to welcome you to the subcommittee, and we look forward to working with you.

That completes the opening statement of the Chair.

[The text of H.R. 4522 follows:]

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4522

To amend the Communications Act of 1934 to extend the authorization of appropriations of the Federal Communications Commission, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1994

Mr. MARKEY (for himself and Mr. FIELDS of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Communications Act of 1934 to extend the authorization of appropriations of the Federal Communications Commission, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Federal Communica-  
5       tions Commission Authorization Act of 1994".

6       **SEC. 2. EXTENSION OF AUTHORITY.**

7       Section 6 of the Communications Act of 1934 (47  
8       U.S.C. 156) is amended to read as follows:

1 **“SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2       “There are authorized to be appropriated for the ad-  
3 ministration of this Act by the Commission \$188,400,000  
4 for fiscal year 1995, together with such sums as may be  
5 necessary for increases resulting from adjustments in sal-  
6 ary, pay, retirement, other employee benefits required by  
7 law, and other nondiscretionary costs, for fiscal year 1995.  
8 Of the sum appropriated in each fiscal year under this  
9 section, a portion, in an amount determined under section  
10 9(b), shall be derived from fees authorized by section 9.”.

○

Mr. MARKEY. We now turn to recognize the ranking minority member, the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman.

Chairman Hundt, Commissioner Barrett, I want to welcome you to our committee, and Commissioner Chong, Commissioner Ness, say that we look forward to working with you in this exciting time for telecommunications.

I want to commend the subcommittee chairman, Mr. Markey, for calling this hearing today, which will provide for the subcommittee members an opportunity to raise questions about some of the important issues and proceedings before the FCC.

Certainly this is an exciting time in telecommunications in terms of new technology, convergence and blurring of traditionally distinct businesses, and new alliances being formed as we begin to build the information superhighway that everyone talks about.

In my view, the task before the FCC has never been more challenging than it is today. By the same token, this is an era of unprecedented opportunity. If you are successful in carrying out the charge that is before this Commission, you will have implemented the rules of the road that will steer this industry well into the next century.

I think the task is daunting, but as I say the opportunity is enormous. And I think it is critical that there be a dialogue between the Commission and all viewpoints that are expressed in this Congress if we are to chart that particular route successfully.

And in this regard, I would like to publicly thank Chairman Hundt for the opportunities that he has afforded me in recent weeks to share my personal perspective as well as what I believe represent the views of many of my Republican colleagues on how the future of the telecommunication industry could and should evolve.

Chairman Hundt and I have had some very candid conversations, but I think they have been very productive. I want to declare my willingness to work with the Chairman and the rest of the Commission. That doesn't mean that I will always disagree or it doesn't mean that my colleagues necessarily will necessarily always agree, but certainly we don't have to be disagreeable.

And I hope that we are going to move forward; that we are going to work together to address the complex issues that are before the Congress and the Commission. While there will certainly be other issues raised today, let me flag a few of the major themes I believe will be discussed at the hearing.

First is FCC funding. The Commission has indicated that it will need additional sums beyond what was proposed in the President's budget early this year. I should note that this committee and specifically the Republican members of it have traditionally been supportive of FCC funding requests. And while we expect the need to be well documented, the view here has been that this is a lean and mean Agency that has historically justified increased funding requests.

Another issue is FCC user fees. The administration apparently is considering asking that the FCC be fully funded through user fees. That of course would require changes in the current statutory

framework, and I think we are going to need to examine this proposal closely prior to moving toward full funding.

Another issue is the personal communications services. When Congress passed the spectrum auction legislation we included very strict timetables for auctions and licensing PCS. And I know that the process has turned out to be more complicated than originally anticipated, either by the Congress or the FCC, and I expect that Chairman Hundt will fill us in on the FCC's progress.

But suffice it to say, as the Chairman mentioned, we all encourage the Chairman to work as expeditiously as possible to have the auction and to beginning licensing.

I believe PCS is a perfect example of a new technology that will bring jobs and help keep the United States as a world leader in the ensuing generation. So I hope we move forward quickly on the PCS issue.

Another issue is the cable proceeding. I would just say and would implore the FCC to conclude the rate regulation proceedings as quickly as possible. It is not fair to the cable industry to keep it waiting on pins and needles for closure and finality in the proceeding. Further, because of the underlying assumption and the infrastructure initiative passed out of this committee on a 44 to zero vote in that the cable industry will have a significant role in building the information superhighway.

To me, that is a reason that this needs to be brought to closure. But again, I want to thank Chairman Markey for calling this hearing. I think this is a very good opportunity to express views, to share viewpoints, and certainly we look forward to working with the Commission.

Mr. RICHARDSON [presiding]. I will recognize myself until the chairman returns, which will be very brief. I too wish to welcome the new Commissioners and the new chairman, and I wouldn't say the old Commissioner, but our friend from the previous administrations.

I especially want to welcome Reed Hundt who I think, in terms of early consultations with Congress on a variety of issues, has been very positive and very eloquent and hard working. I think that is essential, because in the past perhaps, communications between the FCC and individual members was not as strong as it should be.

First, let me say that as somebody who did not support the cable deregulation bill, my hope is that FCC engages in more constructive relationship with the cable industry, I think a dynamic new partner in the telecommunications industry. I was pleased with the Chairman's recent speech to a group of cable operators.

My main concern is rural cable operators are very small ones that operate throughout my State, throughout the country, that because of the pricing issues are disadvantaged competitive structures. So I am pleased that there will be dialogue again, the legislation has been passed, the implementation is in place, and I think it is important that we deal with this issue in a more constructive fashion than both the Congress and the FCC has done in the past.

I am concerned about the Fox buyout. I am concerned about its implications on foreign ownership and minority participation. I am concerned about the Bell companies and the long-distance compa-

nies over their mortal war relating to pricing practices, advertising. I would like to have the Commission, if not today, shed some light on that issue, exactly what the pricing practices of both the Bells and the long-distance companies are.

My main concern and the reason for being here is PCS and minority and women participation in this issue. Every day the country wakes up to new realities in telecommunications. The pace of change is stunning, and the opportunities are limitless. As a Hispanic, I am increasingly concerned about the participation of minorities in the telecommunications industry.

Across our country, only 2.7 percent of commercial broadcast stations are owned by minorities, and Hispanic participation is less than 1 percent. These numbers speak very loudly about the telecommunications industry. And as we move into a new era of telecommunications, it is critical that we make every effort to pave the way for minority participation. An area ripe for minority participation is the emerging PCS industry.

Since March the 8th, 1994, promulgation of rules regarding narrow band auctions, I have been concerned that these designated entities, minority and women-owned businesses, small businesses, rural telcos, will once again be excluded from another telecommunications market. These designated entities face major hurdles before entering the PCS market.

Capital formation, by far, press the biggest challenge to the designated entities, especially for minority-owned firms. Additionally, minority owned firms control only a tiny portion of the telecommunications market. That puts them at a serious competitive disadvantage as the PCS market develops. The rush to implement wireless technologies is massive. Broadcasters, long-distance companies, local exchange companies, cable operators and satellites all want a piece of the limited spectrum pie.

Today I would like to announce that shortly, Representative Schroeder, Chair of the Women's Caucus in the House, and Representative Collins, co-chair of the congressional Subcommittee on Competitiveness and Consumer Protection in this committee, and myself will be introducing legislation to ensure that the designated entities have the capabilities to fully participate in the competitive bidding process.

In the 1993 Budget Reconciliation Act, the Congress made it very clear that the competitive bidding process must afford the designated entities an opportunity to participate, and that maximizing revenues should not be the overriding concern in designing the auction process.

I am increasingly concerned that both of these principles are being disregarded. It is imperative that a comprehensive set of preferences be extended to the designated entities to create opportunities. Specifically, spectrum set-asides, tax certificates, installment payments and bidding credits must be used in the competitive bidding process to ensure designated entity participation. Through addressing the designated entities concerns, the FCC can guarantee that minorities, women, small and rural interests are not left out of another telecommunications industry.

Again, I want to thank Chairman Markey for holding this timely and important hearing. I look forward to working with the FCC as

a national information infrastructure takes shape, and I would be pleased to recognize the distinguished gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, my friend from New Mexico, and welcome Chairman Hundt and Commissioner Barrett and our two new Commissioners, Chong and Ness. It is good to have you with us.

As we consider this reauthorization, the Commission faces multiplying responsibilities, some resulting from the growth in regulated industry, but most imposed by this Congress. Accordingly, the Commission has requested a dramatically increased budget. Of course, questions arise as to the appropriateness of the request and the means of paying for it, and obviously we will get into that sometime later.

Today, every agency of the government faces a tight budget and difficult decisions regarding its priorities and where to cut back. The House of Representatives is no exception. In fact, we are debating the legislative appropriations bill as we speak, and neither should the FCC be an exception to that general premise.

In addition, you may find that those of us who opposed the Cable Act are somewhat less receptive to arguments in favor of funding the bureaucratic growth necessary to implement it. This is particularly so for those of us who continue to doubt the quality of the legislation and, frankly, have some reservations about the way it is being implemented. I will have some questions for our witnesses on this subject.

I also would like to get into the whole question on the spectrum auctions, since that was a bill that I had initially introduced and was ultimately passed as part of budget reconciliation. We want to make certain that it is set up properly and is working well. I was encouraged by the recent announcements about those auctions, and will pursue that later with the panel.

Having said all of that, I look forward to an informative hearing, and I again thank the panelists for their efforts and their time with us today, and I yield back the balance of my time.

Mr. RICHARDSON. The Chair recognizes the gentleman from Virginia.

Mr. BLILEY. Thank you, Mr. Chairman. Commissioner Hundt, Commissioner Barrett and Commissioner Chong and Ness, it is a pleasure to be with you today.

I have some concerns about your docket item 9361 that deal with the regulations for automatic vehicle monitoring systems, and particularly its impact on automatic meter reading devices.

My background was in local government. One of the most difficult things we had were getting meter readers who would actually go and read the meters. It is boring work, doesn't require a rocket scientist, and frequently they would estimate and guess. You know, they would look at what it had been over a couple of months and just assume that the same amount would be consumed in the next month, and pretty soon there would be—one of them would be out sick 1 month when it was time to read the meter, and you get this big discrepancy and the locality would ultimately have to end up compromising the bill.

The thing I am concerned about, in addition to that, you are constantly getting bit by dogs and whatnot, and the same is true for

the utility company, the electric company, getting people to read the meters, particularly in some areas of the city to get people even willing to go.

So they have invested about \$500 million in this equipment, and the concern is that they, since they are unlicensed, will come up short and that they might have wasted this money and be left out in the cold. So I will have some questions on that.

I also, believe it or not, Mr. Hundt, I am glad you are sitting down, I want to compliment you on your approach to enforcing section 17 of the Cable Act, which puts on the Commission's shoulders the problem of achieving compatibility between the product consumers may buy at retail, such as TV and VCR's and cable TV signals which often require specialized descrambling equipment.

I think there is a strong sentiment in this subcommittee that if we are going to have a national information infrastructure, consumers ought to be able to buy their access devices from as many stores as they can, their telephones, rather than having to rent a box from every service provider. So I will have a couple of questions on that as well.

Thank you, Mr. Chairman. I yield back.

Mr. RICHARDSON. The Chair recognizes the distinguished gentleman from Colorado.

Mr. SCHAEFER. Thank you, Mr. Chairman. I do not have a formal opening statement. I am looking forward to hearing the testimony, and the justification of an increase of 15 percent in the FCC's budget.

My good friend from Ohio has pretty well summed up my feelings pertaining not only to the cable bill, but some of the rate rollbacks that we have experienced in the last year. I will be looking forward to getting some answers to some of these questions.

I thank you, Mr. Chairman.

Mr. RICHARDSON. The Chair recognizes the distinguished ranking minority member, Mr. Moorhead, from California.

Mr. MOORHEAD. Thank you, Mr. Chairman.

I want to welcome Chairman Hundt, Commissioner Barrett here this afternoon and to extend a very warm welcome and best wishes to the new FCC Commissioners, Rachele Chong and Susan Ness. We look forward to working with you all as we progress on the important telecommunications issues during the remainder of this Congress.

As you know, the bills we are considering in the House, H.R. 3626 and H.R. 3636, take a competitive approach to bring new services to the American people, via telephone, cable and broadcast distribution services. It is imperative that the FCC regulations implementing these bills reflect the competitive approach they favor.

We are here this afternoon to discuss the state of funding for the Federal Communications Commission. The Commission has a full plate of important proceedings which they will—which will only get fuller when Congress passes the two bills that we are working on, H.R. 3636 and H.R. 3626.

We may not always agree with the Commission's decisions, and the FCC recent cable decision was a major disappointment. We strongly believe that the Commission should have the resources necessary to meet the statutory deadline and to conduct its busi-

ness in a timely fashion. Chairman Hundt, I look forward to your testimony regarding the resource needs of the Commission, as well as the status of the major proceedings such as PCS or your Agency.

Mr. Chairman, I thank you for scheduling this hearing so that we can discuss the myriad of matters pending throughout the FCC, as well as having an opportunity formally to welcome our new Commissioners. We do look forward to working with you as the months go by.

And if you have anything you wish to discuss with any one of us, I am sure we will make ourselves available to you. We welcome your thoughts and I think, for the most part, you will see that we are working together.

Thank you.

[The opening statements of Hon. Mike Synar and Hon. J. Dennis Hastert follow:]

#### OPENING STATEMENT OF HON. MIKE SYNAR

Mr. Chairman, today's hearing on the FCC's fiscal year 1995 reauthorization is not a matter of "deja vu all over again." This is an important opportunity to review the direction of the Commission's major regulatory and policy decisions that are so critical to the evolution of the Nation's information superhighway.

This past spring, under your leadership, we held marathon hearings with expert witnesses on telecommunications legislation to create a farsighted regulatory structure based on fair competition and universal service. Chairman Hundt had just assumed his position at the Commission, so these hearings were in fact his official welcome from the subcommittee. He was a thoughtful and credible witness, and I'm glad we have another chance to hear his views on a range of other issues. He certainly won't need to wear Kevlar here today.

Clearly, we are at the fork in the road with regard to telecommunications policy. Legislation is now pending that opens up the local bottleneck to competition so that all consumers, both urban and rural, have access to advanced products and services at fair prices. However, there are three other policy issues that will affect consumers and industry in the nearer term.

Since passage of the Cable Act in 1992, we have been awaiting relief for cable customers and we need to carefully assess the progress the FCC has made on fully implementing this legislation. Second, the momentum must continue on creating fair ground rules for the auction of spectrum for new technologies, including Personal Communications Systems (PCS), so that consumers have new choices for voice and data services. Third, Mr. Chairman, you and I have voiced our concern over the Commission's lack of enforcement resources. Legislation cannot guarantee a better deal for consumers and our economy if the FCC is not performing the critical auditing and oversight functions that determine whether we are building out our infrastructure in the best way at the cheapest cost. We need to review the proper mechanisms, whether it is through fees or appropriations, to ensure the success of the Commission in meeting its responsibilities, especially in regard to preventing cross-subsidization.

I hope we have a chance to deal with these issues today because they are clearly ones that affect the daily satisfaction of consumers and inform the key future decisions of our telecommunications industry.

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#### OPENING STATEMENT OF HON. J. DENNIS HASTERT

Mr. Chairman, as those of us present today are acutely aware, the telecommunications industry is evolving and will continue to do so with each new technological advancement. As members of this subcommittee, it is our duty to responsibly lead the telecommunications industry into the 21st Century. I applaud you Mr. Chairman and our esteemed ranking minority member, Jack Fields, for the foresight and leadership that you have shown during this 103d Congress in advancing major telecommunications initiatives, particularly, H.R. 3626 and H.R. 3636. Indeed, these bills provide for an effective and responsible vision for the future of telecommunications policy.

Likewise, the FCC plays a key role in determining the future direction of this industry. To be sure, the regulations that you promulgate and the decisions that you

render have a profound impact on the various sectors of the industry such as radio, television, wire, cable and satellite as well as on consumers. As Commissioners, you too have a duty to ensure that the industry is allowed to grow as technology advances and that consumers are fairly and responsibly served.

Indeed, the best and most effective way that Congress and the FCC can achieve these dual goals is to promote competition. Competition is the key for ensuring that all citizens receive high-quality, reliable and affordable telecommunications services. I hope that in all of your deliberations, Chairman Hundt, that you and your fellow Commissioners will ask yourselves whether or not your decisions will enhance competition. If you do, I think that both the industry and its consumers will be well served.

Mr. RICHARDSON. As the chairman enters, let me remind the witnesses that your full statements are in the record; we ask each of you to summarize in 5 minutes and we will start with Chairman Hundt.

**STATEMENTS OF HON. REED E. HUNDT, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY ANDREW C. BARRETT, SUSAN NESS, AND RACHELLE B. CHONG, COMMISSIONERS**

Mr. HUNDT. Thank you very much. It is a great honor and personal privilege to appear before you for the first time at an authorization hearing. As I think this committee has observed, the Commission is very proud to report that we have been working successfully together.

The collegiality that has reigned at the Commission for 6 months, I think, has been a great benefit to the public and it is an honor to add to our ranks Commissioner Ness and Commissioner Chong who will only increase the level of intelligence at the Commission, and I am sure will continue to help us all in fulfilling the public interests.

On a personal level, I am very touched and warmed and inspired by the comments that Chairman Markey, Congressman Fields, Congressman Richardson, Congressman Oxley, Congressman Schaefer and Congressman Moorhead have all made today. We understand—I understand how important are the issues that we have in front of us.

We are very, very lucky at the Federal Communications Commission to be able to work with, report to, and receive guidance from you, Chairman Markey and Congressman Fields and your colleagues on both sides of the aisle. You have, each and all of you, been very helpful to me in the many private conversations that we have had, and I know that you will be equally helpful to my colleagues, and that in the future we can count on the most sophisticated and acute observations from you that anyone could possibly hope to receive.

It is very, very much in the public's—to the public's benefit to have such a wise and remarkable committee stewarding these issues, and although it isn't the subject of this particular hearing, let me say again that we wish you, Chairman Markey and Congressman Fields, an awful lot of luck in moving your joint legislation through the Congress this year.

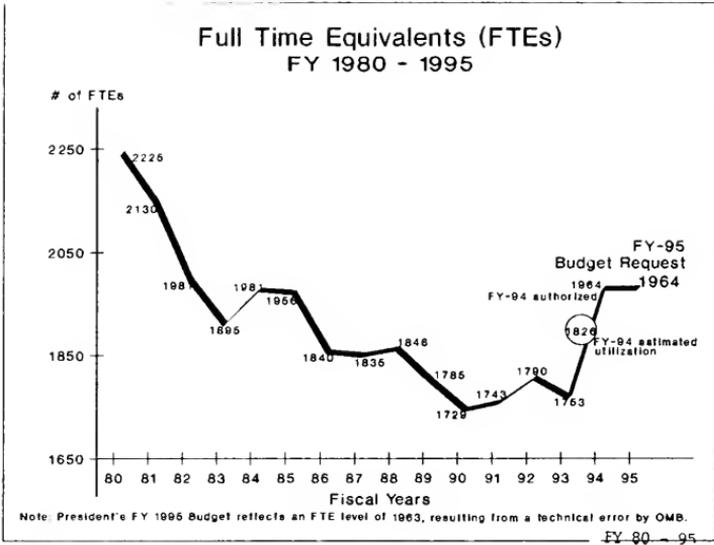
I think all of us Commissioners have supported and applauded your efforts every chance we get, and I hope some sound of our clapping has been heard over here. Even more important, I hope that many others are joining your ranks, because the country can

only benefit from the commitment to competition in communications markets that is embodied in the many wise provisions of your legislation.

I will look forward to discussing with you the range of issues mentioned in your various opening statements, and will rely on my written comments, except to emphasize orally how incredibly important I feel that it is that the whole House accept the authorization mentioned by Chairman Markey, the \$188 million number. This would permit the Commission at last to begin to staff up toward the resource level that is appropriate to deal with the complexity and intensity of the issues in front of us.

If I can, I would like to show you on the easel, because it will shorten my oral comments, to just show you a chart and a version of this chart is I think circulated in front of each of you or will be shortly. But what the easel shows is a declining chart in the full-time equivalents or FTE's available to the Federal Communications Commission from approximately 1980 to basically last year.

[The chart referred to follows:]



GRAPH

FTEs

Mr. HUNDT. Excluding the supplemental hiring for implementation of the Cable Act, just for the purposes of having a baseline that is more or less constant, in 1980 the Commission had approximately 2,200 employees, and this number again, excluding the cable hiring, had declined to approximately 1,700, about 500.

Even while this decline took place over those years, the number of tasks that the Commission needed to perform continued to multiply. This was in part because Congress very wisely recognized many evolving issues in the communications sector. But it was also because that sector itself nearly doubled in dimension, and more companies, more transfers, more applications, more licenses, more contests, more inquiries, all of this meant more resorting by the private sector to the FCC for the issues and rulings that would permit us to implement the law as this sector of the economy continued to grow and develop.

What has inevitably occurred is that the intensity of the work and the decline in our resources has led to backlogs and delays in a number of important sectors. I really feel that it is not acceptable in the public interest or the interest of our economic growth in this country for the FCC to not be able to address these backlogs.

Just by way of examples, and unfortunately I could give you many, many, many examples, but just by way of a few examples, the private radio bureau very much responsible in deregulating and encouraging the growth of mobile telephony in this country now is averaging about 1,000 calls a day from people in the private sector who basically are seeking guidance about how to participate in the wireless telephone sector which is exploding. Only about 800 of these per day can we handle. And the other 200 callers are small businesses, Americans who want to participate in the economy, who want guidance on how to participate in the PCS auction. We don't know who they are. We just can't handle the input. But based on the 800 calls we can handle, that is who we are not servicing, and we have to address this.

In 1992, we opened up applications for MMDC, multi-channel, multi-point distribution service. This was and is a service that can provide competition for cable, and competition for cable programming means choice for consumers and also means an end to rate regulation. The 50,000 applications filed have not been processed by the Commission. It was just too many and the Commission was overburdened and hasn't had the resources.

We have put together a team to try to address this particular problem, but every team we put together is a team that comes off of some other project and causes some other delay somewhere else.

There were 4,000 applications filed in broadcasting, new licenses, transfers of licenses. Because of the number—excuse me. About 1,000 of these are contested by someone. Because of the number of applications and the number of contests, we are overstrapped and now we are taking an average of 24 months to resolve contested applications. We regard that as unacceptable.

We could say to you that we would work harder, but it would be misleading. I know from my 6 months on the job that no one could ask civil servants to be more committed or more creative or more effective than the civil servants at the FCC. The midnight oil is being burned because people care about their work and because

people want to do the right thing for the economy and because they want to return these calls and want to resolve these matters, but ultimately, there comes a time when there just aren't enough hours in the day or the night. And that is why with an urgency, you know, I come to you on behalf of the Commission and ask you to increase the authorization to the levels mentioned by Chairman Markey.

I will spare you the other stats, unless you want to ask about any particular matters. To summarize, the additional moneys over and above the \$167 million that earlier was discussed and was presented by OMB, the additional moneys would permit us to add approximately 250 FTE's. Tentatively, we would allocate them as follows: 124 in common carrier, 77 in mass media, 44 in private radio, and 15 in the General Counsel's Office. These numbers don't have to be particularly in concrete, but I thought it would be fair to you to give you the plan that we would have.

In common carrier, this would permit us, for example, to greatly increase the audit and enforcement capability for inquiring into the possibility of cross-subsidization. What this basically means is the greater ability on our part to introduce competition in local telephone markets and to protect consumer interests and to protect among others the interests of the small IXC's who very much rely on our accounting and our enforcement inquiries to make sure that the huge companies in this sector don't act in a way that is life threatening for the small interexchange carriers.

We have about 400 IXC's in this country because of the breakup of AT&T. It won't do the economy any good, and it certainly won't do those companies any good if they cannot survive because we cannot enforce appropriately the accounting issues at the local telephone level upon which they depend.

In mass media, we would, with these extra resources, be able to expedite rule-making for advanced television. Later this year, we would be able to reduce and virtually eliminate backlogs in the AM/FM licensing issues; we would be able to reduce backlogs in EEO reviews.

In the private radio bureau, we would be able to expedite the rule-making and implementation not only of PCS, but the other aspects of mobile telephony. We would be able to increase the capacity for dealing with other emerging technologies of the interactive video and data services nature.

In the General Counsel's Office, we would be able to get the resources to at last turn around our unfortunately poor record in the Court of Appeals. We have had too many cases reversed in the Court of Appeals in the last several years. One of the reasons is that we just don't have the resources to do the legal analysis in the very complex issues that is appropriate. We do the best we can, and I think we do awfully well with the resources we have. But we need to put more time in it.

As a former litigator, I had the experience from time to time of going to clients and saying that we had to increase the budget to handle a case, and if they wanted their side presented well, it was just going to plain cost more money. Those are not the most pleasant conversations that one could have with a client. Here I am saying to you, the representatives of the public interest with the au-

thorization authority, you of course recognize that you are the stewards of the public interests to implement your will and to do our job for the greatest client of all, the public interest, we need the greater authorization.

And I thank you very much for giving me and my colleagues the opportunity to discuss not only that, but any other issues that you might want to raise. Thank you very much.

Mr. RICHARDSON. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hundt follows:]

**STATEMENT OF  
REED E. HUNDT  
CHAIRMAN  
FEDERAL COMMUNICATIONS COMMISSION**

Mr. Chairman and Members of the Subcommittee,

I welcome the opportunity to appear before the Subcommittee in support of the Fiscal Year 1995 Authorization Act for the Federal Communications Commission. This hearing marks the first time we have appeared officially with our new colleagues, Rachelle Chong and Susan Ness, since the Senate confirmed them last week. I know Commissioner Quello and Commissioner Barrett join me in welcoming Commissioner Ness and Commissioner Chong and look forward, as I do, to their participation today and in the proceedings of the Commission.

The authorization process, of which this hearing is a part, provides an opportunity to review where and how the Commission is currently committing its resources. It also affords a forum to discuss substantively the range of issues confronting the Commission. My statement today, however, is limited to what I sincerely believe to be the Commission's greatest internal challenge, finding adequate resources to address the multitude of issues coming before it during this period of historic industry growth and extraordinary public attention. The inadequacy of the Commission's current resources has reached crisis proportion.

Since becoming Chairman in late November 1993, the most enriching aspect of my tenure has been witnessing firsthand the competence and unflagging dedication of the Commission's staff. It is a privilege to work with so many who fulfill the highest expectation of the public trust. This valuable asset of the Commission, however, has been subject to substantial strain for quite some time. There is simply not enough staff for the Commission to do the work envisioned by Congress and the public to spur the economic opportunity that the telecommunications industry holds. My sense of alarm is heightened by

the certain prognosis that the breadth and complexity of the issues facing the Commission will not diminish, but only increase, in the near future.

This Subcommittee knows well the substantive analysis the Commission must engage in, as your own process requires much the same. Affording a full opportunity for interested parties to advocate their positions and undertaking a thorough evaluation of the issues at stake are the prerequisites for decisions reflecting the public interest. What is just as critical is affording that opportunity and conducting that evaluation expeditiously. Realization of the great opportunities for economic growth in this vital industry are dependent upon timely action by the Commission.

The Commission is vigilantly pursuing the establishment of an environment in which consumers have access to a range of competitive choices at competitive prices, but also one in which meaningful access to modern telecommunications is available to all Americans. Promoting competition and access concurrently is not easily accomplished, as this still represents a fundamental change for large parts of the telecommunications industry. It is rare for an entity to welcome a competitor, and the Commission's hard experience shows the degree to which parties cling to the status quo. The Subcommittee's commendable pursuit of H.R. 3626 and H.R. 3636 demonstrates that the industry still has barriers much more reflective of its former self than of the competitive image we embrace.

The strain of inadequate resources at the Commission is evident in several respects. The infrastructure of the agency, from where it houses its employees to the quality of its equipment, is in need of substantial upgrading. More critically, the agency is woefully short of human resources. Staff must be marshalled from around the entire agency to ensure expeditious resolution of any significant matter. For example, in both the reconsideration of

the cable rate rules and in structuring the means to assign the spectrum for Personal Communications Services (PCS), it has been necessary to draw personnel from across the Commission and assign them to special task forces to ensure that the projects move forward with speed. This leaves gaps in the Commission's ability to fulfill its more routine tasks in a timely fashion. The backlog of lower profile matters simply proliferates.

Consider, for example, the following representative facts. Informal complaints regarding telephone rates and services grew from 16,988 in 1992 to 32,024 in 1993; 6,656 of these complaints remained pending at the end of 1993. The average time needed to resolve one of these complaints is 315 days, with over 5,000 of the complaints taking more than one year to resolve. Pending applications for land mobile service licenses increased from 8,000 to 42,000 in the last year, doubling the time for processing the over 600,000 licenses issued by the Private Radio Bureau to more than six months. Private microwave licensing requests have increased 100% over the last year, increasing substantially the need for engineering review. Over 50,000 Multichannel Multipoint Distribution Service (MMDS) applications were filed in 1992, creating a 3-5 year backlog. Licensing requests for Interactive Video Data Service (IVDS), General Mobile and Amateur Services have increased 30% during the past five years. The Private Radio Bureau receives over 1,000 telephone calls a day, 200 of which cannot be answered within current capacity. The backlog of pending applications for Instructional Television Fixed Service rose over four times from 1990 to 1993, from 251 to 945. Of the 4,000 applications in FM broadcasting filed in 1993, 25% were contested and took an average of 24 months to resolve. There were 3,445 inquiries from Congress in 1992, 5,167 in 1993, and already 2,366 have been received this calendar year. The Commission is currently receiving about 4,000 requests from the public for information per month.

Moreover, the enormity of the tasks before the Commission is reflected in a number of areas where technology and investment have made change possible. In the common carrier area, for example, the Commission has sought to bring competition to all aspects of telephone service. Its proceedings to provide expanded interconnection access capability go beyond long distance and include local exchange competition. Ensuring the substantial benefits of greater consumer choice, faster deployment of technology, reduced rates, and increased efficiencies on the part of the local exchange carrier require considerable efforts by the agency. Precluding cross-subsidization and other anti-competitive conduct is an overriding responsibility, as is adapting to the emerging competitive markets and fast-changing technology. In an increasingly competitive marketplace, the Commission must ensure that its regulations continue to advance fundamental universal service goals. There are presently six major petitions advocating reform of existing access charge regulations, which were established in an era of monopoly local telephone service. Each petition, as well as the 240 comments and replies that have been filed in response to these petitions, raises unique issues and must be carefully evaluated. The Commission is currently able to dedicate four staff members to this important work.

Video dialtone reflects the Commission's effort to bring about competition in the cable arena. Enabling video programmers to offer wide-ranging services through the local telephone company is the alternative to the regulatory structure to which the cable industry is now subject. Since the Commission issued its August 1992 order on video dialtone there have been 23 petitions filed seeking reconsideration. Local telephone companies, cable television interests, broadcast interests and several state regulatory bodies, have all sought reconsideration or modification of some aspect of the Commission's order. Additionally, a joint petition seeking comprehensive cost rules for video dialtone services has been filed by the Consumer Federation of America and the National Cable Television Association, with

twenty-seven parties filing comments or opposing the joint petition. Finally, under section 214 of the Communications Act and the Commission's rules, the Commission must review all proposed video dialtone applications to ensure they meet the public interest test in the law. Twenty-nine applications for approval have been filed, four during the last week, and 24 of these are pending. There have been over 115 petitions filed to deny these applications. On two New Jersey Bell Telephone applications alone there have been approximately 50 pleadings from interested parties.

Video dialtone offers the potential for increased competition in the video marketplace and the economic growth and new and innovative services that will inevitably follow. The transition to competition requires vigilance against improper cross-subsidization as well as a commitment to ensuring non-discriminatory access by video programmers. The Commission has recently assigned over ten staff members from various components of the agency to carry out these responsibilities. This is another example of individuals being reassigned from other duties.

Another area where competitive opportunities exist involves what was once perceived as a separate sector, broadcast television. Through the advent of Advanced Television Service (ATV), including both high definition television (HDTV) and ancillary services, many telecommunications uses of broadcast television are now possible, including forms of PCS. In the context of spectrum allocation and licensing, the Commission has structured a process where the many significant issues involving scanning and transmission techniques, as well as economic and legal issues, can be raised and resolved. The digital technology that ATV offers can greatly improve the quality and quantity of communications services available to viewers. The proceedings have involved hundreds of parties. The Commission must adopt technical standards, as well as finalize frequency allotments, and

monitor the progress to full ATV. The Commission's effort will continue for several years. Any regulatory delays will hinder growth and U.S. leadership in this area.

To implement the law properly, virtually every matter involves an extensive analysis of technical, economic, and legal issues. The substantial financial interests at stake dictate fair, competent, thorough and expeditious decisions. As noted above, the ramifications of the Commission's actions draw strenuous advocacy from those affected. That which is advocated, while aggressive and extensive, usually reflects a particular private interest, not necessarily the public interest. It falls to the Commission to foster entry into all markets so that the public is the true beneficiary.

We have this week submitted to the Office of Management and Budget a proposal to amend the fiscal year 1995 budget request for the Commission. In 1980, the Commission had 2,200 full-time equivalent (FTE) positions; by 1993, following a decade of extraordinary industry growth, FTE positions had fallen to 1,724. While enhancements were provided last year, these additions were dedicated solely to implementation and enforcement of the 1992 Cable Act. The premise of our proposal to the Office of Management and Budget is that, at a minimum, the Commission must be brought back to the staffing levels of a decade ago.

Our proposal to OMB addresses not only how the enhancements we seek are to be financed, but requests that the allocation of FTEs to the Commission be raised. Through the Subcommittee's efforts, the Commission has a revenue source by way of the fees under Section 9 of the Communications Act. The premise underlying Section 9 is that those subject to the policy, rulemaking and enforcement activities of the Commission should provide the funding base for its efforts. Our proposal will produce improvements and efficiencies with respect to those issues which parties justifiably believe take too long to resolve. We have

advocated strongly to OMB the benefits that would accrue from a Commission that is able to move expeditiously, to structure an environment that enhances economic growth and encourages the job opportunities that will follow naturally.

An institution subject to the constant trauma of shuffling its most valuable assets will soon surrender its ability to respond to any challenge. The need to build continually a reservoir of expertise will go unfulfilled. The Commission must gain a greater capacity to confront the range of matters now pending before it. It should rise to its potential of being the catalyst for the great future telecommunications holds. We seek your advice and help in making this possible.

Thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

Mr. RICHARDSON. Commissioner Barrett, please proceed. As you may have heard, we have a vote.

### STATEMENT OF ANDREW C. BARRETT

Mr. BARRETT. It will be a great deal shorter than 5 minutes. I simply want to compliment you, Mr. Chairman, in particular and in general the committee for its support over time.

After about four times, I don't know why my 20-year friend Denny Hastert never stays around while I say something. As you know, Denny and I go back to Illinois when we helped rewrite the Communications Act in Illinois.

I too look forward to working with you. I think the Chairman has put into a framework that I consistently agree with. I think his points are very much on target and those that I support, and certainly I look forward to continuing to work with read under his leadership, along with my two colleagues.

Thank you very kindly.

[The prepared statement of Mr. Barrett follows:]

#### STATEMENT OF ANDREW C. BARRETT, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee on Telecommunications and Finance, thank you for the opportunity to address matters pertaining to the Federal Communications Commission's ("FCC") budget authorization for fiscal year 1995. In recent months, the FCC has played an integral part in the formulation of the interactive, multimedia marketplace that will be built around digital switching technology, new programming services and additional providers.

I would like to begin by welcoming the arrival of my new colleagues, Commissioners Rachelle Chong and Susan Ness. It has been some time since there has been a full complement of Commissioners at the FCC. As we prepare to address issues that involve the reconsideration of our rules for personal communications services and cable television, new competitive bidding rules, matters relating to local exchange competition, our broadcast multiple ownership rules, children's television guidelines as well as other mass media issues now pending before the FCC, I welcome the opportunity to share their views with respect to developments in the telecommunications industry. I am confident that, as we confront the many policy issues that are now before the Commission, under Chairman Reed Hundt's leadership, we will accomplish a great deal in the time to come.

Also, I would like to share some of my major concerns with regard to the present and future efforts at the FCC. First, I share Chairman Hundt's belief that the Commission must have the benefit of sufficient resources and personnel in order to manage its tremendous flow of information and to undertake the sophisticated analysis that will be necessary to strengthen our rules. Increased funding derived from user fees should prove very helpful in the long term, but I am concerned that our short term needs are adequately addressed as well. The ever evolving and litigious nature of the telecommunications industry is often visited on the FCC and creates substantial personnel requirements while magnifying the need for resources. If we are to remain an Agency that provides the current industry and new entrepreneurs with opportunities to possibly create or replace jobs and deliver innovative services to the public, the FCC must be allowed to continue its modernization efforts, both inside and outside of the Agency.

The FCC must also be given the means to implement its regulations for new services in a more timely fashion. In order for our industries to remain viable competitors in an increasingly aggressive global market, our present infrastructure must continue to be upgraded, and new services must continue to evolve efficiently. Delays resulting from insufficient resources further exacerbates the problem of developing rules that support these objectives.

In addition to adequate resources, the Commission must also continue to effectively address complex economic, spectrum and competitive infrastructure matters. I am excited about the prospects of implementing rules that could eventually offer consumers a choice among competing wireline and wireless network infrastructures. However, beyond broad policy statements provided by various parties, our real chal-

lenge comes with the execution of the rules required to implement new service alternatives.

To bring new wireless services to the public, the FCC must make spectrum channel and service rule decisions in contentious dockets such as Mobile Satellite Services and Personal Communications Services (PCS) at 2 GHz. To achieve this goal, we must implement rules that secure regulatory parity for Commercial Mobile Radio Service providers, allow band clearing for new wireless PCS services and we must conduct auctions for narrowband PCS, Interactive Video Data Services (IVDS) and broadband PCS before the end of 1994.

Notwithstanding these concerns, in order to ensure that the current rules do not stifle the improvement of existing services, the FCC is engaged in an ongoing effort to update its Private Radio rules, license Cellular Unserved Areas, and implement Cellular License renewal rules. We also are involved in ongoing efforts to authorize separate satellite systems, review the possibility of a new Local Multipoint Distribution Service (LMDS) at 28 GHz and allow COMSAT to continue to innovate in its service offerings. Finally, we must continue to plan and, at the same time, predict future spectrum allocation needs, and prepare for the 1995 World Radio Conference. All of these wireless areas involve complicated issues, and the manner in which we execute the implementation details will determine how quickly these service alternatives become available to the public, and ultimately, create the possibility for new economic activity.

In the wireline area, the FCC continually searches for ways to improve its rules to bring a competitive framework to the local exchange market. You are aware that some of these issues require legislative solutions such as the telephone-cable cross-ownership restriction while other issues are a function of complex FCC regulation set within the confines of remaining Modified Final Judgment restrictions and the cable-telco statutory prohibition. Recent efforts in New York, Maryland and Illinois highlight the importance of a sound regulatory framework for interconnection and access.

We also have adopted a Video Dialtone framework to give local exchange carriers incentives for infrastructure upgrade and service enhancements, and to provide programmers and end users with potential alternatives to cable in local markets. This area continues to raise multi-faceted issues which, in order to proceed, the FCC must immediately address in its section 214 application process. Finally, we are reviewing the effects of price cap regulations on the major Local Exchange Carriers.

The Commission must continue to obtain the resources necessary to implement the rules promulgated under the Cable Act of 1992. These rules, which I supported, must be implemented in a manner which avoids both consumer and industry confusion. In recent months, since the adoption of the FCC's cable rate regulations, the effect of our decision is becoming apparent. I remain concerned about the potential impact of the FCC's cable regulations on small independent cable operators. Notwithstanding these concerns, the decision to adopt the cable rate regulations was a unanimous one.

The cable industry represents significant infrastructure investment, and can provide competitive infrastructure alternatives, new jobs, and consumer choice in a future broadband world of voice, video and data services. The industry can also be a significant contributor to the development of PCS services. To that end, during the transition period to effective competition, I believe the FCC must balance its regulatory efforts to provide benefits to consumers, while minimizing confusion in the cable industry from our administrative enforcement process.

The FCC must also endeavor to review and streamline its broadcast ownership rules to ensure the industry's continued growth in the video marketplace. The surge of activity in the transfer of radio stations since adoption of the FCC's revised rules governing radio station ownership is apparent. Moreover, there have been reports of increased numbers of radio stations that are participating in duopolies and local marketing agreements. This consolidation of media ownership, though beneficial in certain respects, presents obstacles to the entry and possibly the survival of small businesses. Such obstacles include, but are not limited to, capital formation and the lack of expansion potential. As the Commission reviews the impact of radio deregulation and modified financial interest and syndication rules, and reconsiders its television multiple ownership regulations, I am concerned that we remain cognizant of the repercussions of any actions on small businesses in the broadcast industry.

Finally, it is an exciting time to be at the FCC and I look forward to working with your subcommittee, the Chairman and my fellow Commissioners to address issues that directly impact the development of the telecommunications infrastructure. However, it is important to recognize that the potential for development and growth in the video marketplace will be contingent upon the ability of Congress and the

Commission to foster a competitive environment which will provide benefits to the consumer public Thank you.

Mr. RICHARDSON. Commissioner Ness? Can you be as brief?

#### STATEMENT OF SUSAN NESS

Ms. NESS. I can't imagine this going too long.

I would like to thank the chairman and the subcommittee for the opportunity to participate today. I have enormous regard for the work of this subcommittee and look forward to working individually with each member. Under the able leadership of Chairman Hundt, I look forward to working with Congress to work closely to understand and decide the many communications issues that are so vital to the future of the country.

Although I have had the opportunity to be involved in a wide variety of communications issues during my career, this is now only my fourth day on the Commission. I am here to listen, to learn about your concerns, and I am happy to answer any questions.

Thank you.

Mr. RICHARDSON. Thank you.  
Commissioner Chong?

#### STATEMENT OF RACHELLE B. CHONG

Ms. CHONG. It is a real great pleasure to be here today with my new colleagues at the Commission. I want to thank you for this opportunity to meet and to listen to your views in this very exciting industry.

As the newest kid on the block, I have been really impressed with the very broad array of issues that are being treated at the FCC. We are being faced with issues that effect all Americans, and in fact, probably the world.

In the short time that I have been with the Agency, the same 4 days, I have met with many of the FCC staff members that have been grappling with these very important issues. I would like to say that from my observations, they are dedicated and they are professional. I really look forward to working with them and with Chairman Hundt.

I am confident that they are up to the task of implementing your policies and making sure that we properly and fairly monitor these industries. I hope to work with you closely, and I look forward to a continuing dialogue.

Thank you.

[The prepared statement of Ms. Chong follows:]

#### STATEMENT OF RACHELLE B. CHONG, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee, I would like to thank you for the opportunity to appear before you today with Chairman Hundt and my colleagues on the Federal Communications Commission. I am very excited about joining the Commission and hope to use my expertise as a telecommunications attorney to develop sound public policies and pragmatic regulation. I am looking forward to working closely with the members of this subcommittee on telecommunications issues.

This is an exciting and challenging time for Congress, regulators and telecommunications service providers alike. The development of new technologies and services offers the promise of advanced communications for the American people. These services have the potential to improve the quality of life for Americans. For example, such services can facilitate better communications between educators and

their students, health care professionals and their patients, and governments and their constituents.

The rapid changes taking place in the communications field present both challenges and opportunities for policymakers. In this regard, I believe that a constructive, continuing dialog between Congress, the FCC and the industry is essential to develop a sound national telecommunications policy consistent with the goals of the Communications Act.

As we work together, I hope to pursue policy initiatives at the Commission that facilitate competitive markets that deliver quality services to consumers at reasonable cost. I envision global communications systems that promise to bring the benefits of telephone and interactive video and data services to even the remotest parts of the world. I will strive to ensure that all Americans have access to the benefits—both current and future—of our telecommunications systems. Thank you very much.

Mr. RICHARDSON. I thank the Commissioner.

The committee will recess for approximately 15 minutes.

[The prepared statement of Commissioner James H. Quello was submitted.]

#### STATEMENT OF COMMISSIONER JAMES H. QUELLO

I am submitting this written statement in support of the Fiscal Year 1995 Authorization Act for the Federal Communications Commission.

Initially, I want to assure the chairman and members of the subcommittee that the concerns I have expressed over the prospect of our administrative processes delaying the implementation of Personal Communications Services (PCS) have largely been resolved. The auctions for narrowband PCS have been scheduled for the last week in July and the reconsideration of broadband PCS will be addressed in the very near future. The rules will be in place to conduct the largest competitive bidding process ever undertaken by the U.S. Government, i.e., auctions for broadband PCS, by the end of 1994. I believe that the Commission is now acting expeditiously and responsibly to establish the regulatory framework for this family of advanced mobile communications services.

The Federal Communications Commission has endeavored to meet our jurisdictional responsibilities during a time of diminishing resources, explosive growth in advanced technologies, and profound changes in the communications industries. Since 1980, the workload has increased dramatically while staffing has decreased precipitously. Prior to the approval of supplemental resources in fiscal year 1993 to implement the Cable Television Consumer Protection and Competition Act, FCC staffing had declined by over 20 percent (viz., 464 FTE's). In my judgment, the Commission will need substantial additional resources if we are to meet our responsibility to determine and act in the public interest in responding to technological advancement, establishing new and improved communications services, managing the orderly restructuring and growth of a competitive telephone industry and accommodating the growth of spectrum-based services.

Accordingly, I fully support the request by the FCC for additional personnel and fiscal resources to modernize the Commission's infrastructure. Even with the increased funding we have already obtained, existing Commission resources are having to be continually reassigned to meet statutory and judicial deadlines. I have consistently expressed my concern that our dedicated professional staff be given the resources they need to do the excellent job they strive to do. Adequate staff and infrastructure will ensure that the complex and critical issues that come before the Federal Communications Commission are handled in a timely and diligent manner.

[Brief recess.]

Mr. MARKEY. We can reconvene the hearing.

We apologize to one and all. One of the problems with having afternoon hearings in the Congress is that there are so many roll calls in the afternoon. It is unusual to have an afternoon session in the subcommittee, and as a result, there will be interruptions in the course of the hearing for which we apologize to one and all.

Mr. Chairman, could I ask, what role do you see wireless playing in the information superhighway? You know, in many of our communications areas, we talk about it as a negative, as though you can't talk about using the air or using the spectrum in and of itself;

you have to talk about it defined as being wireless, as though it couldn't stand alone with its own word, it has to be related to an actual piece of equipment on the land that ordinary people can relate to, a wire. This is without a wire; this is just using devices that are closer to what Dick Tracy was, you know, imagining, Chester Gould, the two-way wrist radio with messages being beamed through the air.

And I think a lot of Americans are wondering, where is this new horizon now for the American people and what are the prospects in the future for these new technologies to be in their hands within a very short period of time?

Mr. HUNDT. Well, this is an excellent question and, Mr. Chairman, I think you are right to comment on the fact that we sort of have a failure of perception now in that we are not able when you talk about a mobile telephony without comparing it to wire as if there was something missing. You are absolutely right, this is a business that comes out of thin air in that it uses the spectrum.

Congress, in its very great wisdom, as you well know, Mr. Chairman, since you were heavily involved in it, authorized the FCC to auction spectrum, and this we intend to begin doing later this year.

In the end of July, we will be conducting the very first auction of spectrum in American history, thanks to Congress' statute. This will be an auction conducted here in Washington, D.C., starting I believe the 25th of July, for a narrow band, advanced paging and beeping services.

Mr. MARKEY. What is that, now? Why don't you explain what that is exactly? What kind of products would that result in for the American consumer?

Mr. HUNDT. Well, let me say two things. First of all, we have, in the interests of exercising our discretion, not attempted to dictate the uses that would be made of the spectrum, so that what I pass on to you here is not any requirement for the exploitation of the spectrum, but rather just what we have heard from people who are interested in participating in the auction.

They are talking to us about paging techniques in which in your pocket in less than a wallet size you could have a device that would not only inform you about when somebody wanted to call you, but that might give you a readout of recent news, headlines only, or might tell you when there was a vote in the House of Representatives, or otherwise might communicate to you virtually any kind of information.

Mr. MARKEY. I am sure every American will want that service, when are the votes going on in the House of Representatives.

Mr. HUNDT. Possibly a specialized audience. But I think the point is, many specialized audiences, whether it is medical information or news or sports, many specialized audiences may well exist.

Mr. MARKEY. Well, some of those services exist today. What does the set of decisions which the FCC is about to make add to the existing technologies that people are somewhat familiar with, even if they haven't yet purchased any themselves?

Mr. HUNDT. That is a very good point. What is added is our ability to increase the level of competition in these businesses because you have given us more spectrum to mete out and you have also given us the ideal technique for issuing it. We don't have to be

bogged down with lengthy comparative hearings; we don't have to go through the much-maligned and justly maligned lottery processes.

We are actually able to auction the spectrum so that the people who have an idea to which they attach value have a perception of how to build a business out of thin air, if you permit the saying, can go and pay the top dollar and can get the license and can get into whatever is the business that they want to pursue.

The most exciting opportunity we are told is the opportunity to jump start a vastly more competitive mobile telephony business in the United States. In about 97 percent of the United States, one can subscribe to cellular telephone service. But there are only two places to go to get it everywhere, and we will be able in the broad band auction to create the opportunity for multiple providers, some greater number, a number great enough to ensure real competition in providing the services.

Based on everything that we have been told on the record—I am not mentioning anything here that isn't on the record—there is a great deal of evidence that prices will go down, the number of subscriptions will go vastly up.

We have been told on the record that it is possible that within 10 years that there will be 100 million subscribers for mobile telephony if we can jump start a competitive market. Just to—

Mr. MARKEY. So what does that mean, in other words, for the ordinary American? Mobile telephony. Translate that into, you know, an ordinary person's real life situation, if you could.

Mr. HUNDT. Well, it means the following: you may have a telephone at your home sitting in a cradle, paying the local telephone bill and you may be able to pick up that telephone and walk outside with it and continue to use it and get in your car and continue to use it and put it in a cradle in the car, and when you get out of the car at the other end, continue to use it and go on up to your office and still use that same telephone.

Mr. MARKEY. So mobile phone will no longer mean being in an automobile; it will mean it is mobile with you from the moment you leave the house in the morning. But how would you differentiate that from, you know, from the consumer's perspective of cellular phones right now that they might plug in at night, charge the battery and carry with them all day? What is the difference?

Mr. HUNDT. The difference is not so much the technology, although there are some differences, the difference is the cost and the availability of choice.

Mr. MARKEY. What is the difference in cost?

Mr. HUNDT. Well, we don't know for sure because we haven't had the benefits of a robustly competitive mobile telephony market yet. But I have been told by experts that the anticipation is that 100 million subscribers that in 10 years will have—if we have competition, will have 100 million subscribers who will be paying about \$40 a month for mobile telephone service, and they will be—the prices will be low enough that about 20 percent of the minutes of usage will be minutes that could alternatively be made over the wire telephone system, in other words, will possibly have pricing so low on the mobile side that there will be overlap and interchangeability with pricing on the nonmobile or wire side. This means, for

sure, greatly decreased per unit charges than people face today in the cellular telephone business.

But let me quickly say that we had the exact same experience in the long-distance market over the last 10 years whereas competition came in, prices went down, but the demand went so far up that all the competitors did better. AT&T lost market share from nearly 100 percent to 58 percent, and every quarter that is lost market share, it has earned more money and done better because demand has gone up.

I think we have the same prospect of consumers in the economy and the competitors having their cake and eating it too, so to speak, in the mobile telephone market, thanks to the congressional statute of 1993.

Mr. MARKEY. Well, is 1994 the year of PCS, of personal communications systems? Is this the year that the decision will be made at the FCC?

Mr. HUNDT. It is the year of commencing the auctions. We have on our agenda coming up next month a vote on the broad band reconsideration. At about that same time—

Mr. MARKEY. What does that mean now, broad band consideration?

Mr. HUNDT. Broad band referred to the spectrum grants broad enough, large enough to permit the mobile telephone services.

Mr. MARKEY. We have a jargon alert here in the committee. C-SPAN is watching this today.

Mr. HUNDT. You are absolutely right.

Mr. MARKEY. We try to reduce it down to a form that ordinary people can understand, as well as Members of Congress.

Mr. HUNDT. Yes. After 6 months on the job, I am beginning to fall into jargonism and I am glad to be shaken out of it. The advanced paging and advanced beeping services auction will commence at the end of July. We don't know how much money will be raised, but we do believe that we will greatly increase business opportunities, job creation and competition.

Toward the end of the year, we will commence the even more historic auction of enough spectrum to support whole mobile telephone businesses in every geography in the country. We don't have a precise date yet, but we are on a schedule that would have that occur toward the end of this year.

This would mean that by the beginning of next year, ground would be broken in communities all over the country to install the switches and cell sites and other hard objects and assets that are necessary to support a mobile telephone business. It would also mean that business plans were finalized and consumers would be able to look forward to the imminent prospect of new sellers knocking on their door or advertising for mobile telephone service. And least—last but not at all least, it would mean greatly enhanced job creation.

We have now 17 million cellular telephone subscribers in the country. If we had 100 million in the larger mobile telephone market—and math, at least addition and subtraction I am still trying to do—we would have 83 million more.

The way you get 83 million more subscribers in any business is you hire some people, and you do a lot of work, and you have a

much bigger economy. So those are some of the benefits that we can all look forward to if we can commence the auctions on schedule.

Mr. MARKEY. And the end of this year, 1994, is the target for those auctions to commence?

Mr. HUNDT. That is the target for those mobile telephone spectrum auctions.

Mr. MARKEY. How long will it take for all of the auctions related to mobile telephone to be conducted?

Mr. HUNDT. Well, we haven't resolved that precisely yet. We would like to finish it in a matter of a few months. Congress in its statute gave us a total of 5 years from the end of 1993 through the end of 1998 in which to conduct various auctions.

We would like to beat that goal by a number of years, hopefully more than 3 years, and that is the schedule we are on.

Mr. MARKEY. If I could, for the consumer now, what does this mean in terms of their options if they would like a mobile phone? Something that is like a cellular phone except it may be called by a different name now. It is a variation of it.

It may be less expensive and it may be less powerful, but if it is less expensive, maybe it makes it more attractive to more people in a broader audience.

Right now in America every local telephone company has a cellular phone license for most—for all intents and purposes, so whether you are in Pacific Telesis or NYNEX or Bell Atlantic region, it doesn't make any difference.

The telephone company can provide that service for you, and in every region in the country, in addition to the telephone company, there is another license as well for a cellular phone.

So there are two companies that consumers can call today if they want a cellular phone service. What does this new auction process mean in terms of additional companies that a consumer might be able to call for a similar type of service within the next 1 or 2 years?

Mr. HUNDT. We don't know the precise number of competitors that market conditions will ultimately lead to, but it certainly means more than two. It means three, four, five, and on up.

We don't know the precise number, but it means that if you don't like the quality of service, instead of just the two choices you have today, you can go to a third place or a fourth place and say, can you offer me a better quality of service, fewer dropped calls, less static, easier time getting your call through, the kind of customer complaints that everyone who has used a cellular telephone has at some time given voice to.

Mr. MARKEY. So in your opinion, in almost every market in the United States, within a few years, 3 or 4 years at the maximum, there will be at least two additional choices in addition to the two that now exist with the telephone company and the one competitor that exists today?

Mr. HUNDT. That is certainly our hope. We don't aspire to do anything to artificially sustain businesses that aren't economically viable. Our goal here is to let the demand by consumers shape the market.

If consumers want it, they will pay it, and if they have choice, they will be offered fair pricing. If it leads to 3, 4, 5 and on up in terms of the number of competitors, the more the merrier. As one professor at the Harvard Business School told me, there is no number on the right number of competitors.

As many as can survive is the right number, and the model here is that they will be aggressively competing for market share and inventing new techniques, lower price, better quality, different services, product differentiation to try to attract consumers.

The one winner for sure in that kind of competition will be the American consumer.

Mr. MARKEY. So the analogy that is appropriate here is the one that you made initially, which is that in the long distance marketplace, back in 1981, 1982, most of us used AT&T. They were the long distance company.

Now, MCI and Sprint and other companies existed, but they had a relatively small share of the market. But, after vigorous competition was introduced into the marketplace, beginning in 1982 and 1983, we saw a rapid decline in the cost of long distance service, making it evident that long distance prices had actually been artificially high because there was no competition.

What we can reasonably expect here is that, as more of these new companies are given enough spectrum so that they can also provide this mobile service, cellular phone bills will go down as well because there will be more competition. In fact, these companies will be vigorously attempting to convince consumers to move over to their product in the same way that Sprint and MCI and dozens of other companies were able, beginning in 1982 or 1983, to undermine the AT&T monopoly.

Is that the theory?

Mr. HUNDT. That is very, very right, and interestingly, I have been told by many people who would like to be in this business that as the price per minute for a mobile telephone call goes down, it may well be that people's business go up, because they will use the phone that much more, make that many more minutes of calls.

If true, that means greater efficiencies, greater economies of scale for the operators, much larger economic growth in this sector, and ultimately it means more job creation as well.

Mr. MARKEY. Well, that is good news. My time is expired on this round. I want to come back and ask some more questions.

Let me turn and recognize the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman.

Chairman Hundt, I missed some of the chairman's earlier questions, so if I ask a repetitive question, forgive me, but I also want to explore just a moment the PCS process and it is my understanding we have missed some of the statutory deadlines because this has been more complex than anyone imagined, and what I would appreciate, if you could illuminate us as to some of the complexities, you know, where we stand.

One of the questions I think many of us have on this side is if the revenue that was forecast for these PCS auctions does not come until next fiscal year, does that present a scoring problem or other things being considered as a way to make up the shortfall of revenue?

Just basically if you could give us some illumination on where PCS is.

Mr. HUNDT. Sure. That is a very fair question. The process most simply is that with respect to narrow band or the thin slices of spectrum appropriate for paging and beeping type services or broad band, the larger swatches of spectrum appropriate for mobile telephony, with respect to either of them, we needed, in compliance with the statute, to follow a procedure of first deciding how to divide the spectrum in terms of band width and in terms of the geographic markets for any particular user.

In addition to making that decision, we needed to decide what kind of auction to conduct. There are many subparts to these two processes and the rulemaking procedures required by the Administrative Procedure Act are by no means simple. Furthermore, they require a phase of reconsideration after an initial order.

Where we are now with respect to narrow band is that we are essentially finished with the process on narrow band. There may be a few loose ends, but essentially we are finished, and we have been able to set the auction date, which is the end of July.

With respect to broad band, the chief remaining actions are, at our next meeting in June, we will complete the reconsideration of the decision on how to divide the spectrum, both in terms of band width and in terms of geographic market.

I hope, at the same time, but you know certainly at that same time or approximately the same time, we will proceed on to also elect what method of auction we would use for broad band, a decision we have already made with respect to narrow band.

When we have made the decision about the kind of auction, we will be able to pick a date for the start of that auction. Our target is to have it be toward the end of the year. I don't know exactly what we will decide.

Obviously we have not yet deliberated or voted on that, but it is reasonable to anticipate that both the narrow band auction and the broad band auction will continue over a number of days. It will not just be a 1-day event. That is because these are rather complex auctions for the bidders to participate in.

In meetings that I have had with people who are interested in bidding on broad band, they have told me that they would like a certain amount of time between the final decision on the allocation and the auction methodology—excuse me, between then and when the auction is exactly held so that they can do the various things that they need to do.

Number one is they need to develop an auction strategy. Number two, in many cases they will need time to go and raise capital so that they will arrive at the auction with enough funds to actually participate. This is especially true for a small business, women, minorities, and rural telephone companies who should be able to participate, and Congressman Richardson mentioned earlier the need to explore ways in which they can have a more equal opportunity to participate, but whatever be the techniques used to give them advantages, it will nevertheless be necessary for them to raise capital since they will not start with deep pockets.

I have been told personally, and I will let all the Commissioners speak for themselves on this, that the smaller businesses would

like between 4 to 6 months to pass between the definitive auction decision and the date itself, whereas the larger businesses have said that they would like 2 to 4 months to pass.

Well, the overlap appears to be at the 4 month's point, and that is roughly our plan for how much time should pass between our definitive decision and the auction date. But I could be off, you know, by a few weeks or even a month or so either way.

We haven't made a definitive decision yet on what would seem to be optimal for all of the bidders.

We are trying to have this be a very open process where we do a lot of listening to the would-be bidders, both the small business bidders and the big business bidders, so that we can find out what is best for all of them.

It doesn't seem that there is any reason for us to make that decision and impose it on others without doing that listening, so we are engaged in a lot of consultation right now on that.

Mr. FIELDS. Do you feel comfortable that regarding the broad band auctions, that that will not slip past the latter part of this year?

Mr. HUNDT. I don't feel wholly comfortable and let me explain one of the areas of concern that I have. The broad band auctions are scheduled by OMB, and I should add the FCC had no part in generating the estimates of revenue. It is scored at possibly raising billions of dollars as you well know, Congressman.

We need to invent new ways, because we never had to do this before, to keep track of the bidders, to collect their deposits, to make sure we don't make any procedural mistakes that could be very, very unfortunate, and to deal with the disposal of what might be thousands of licenses through a very complex process.

To do that, it is our intent to go outside, through the procurement process, the normal government procurement process, and see who would like to contract to provide the expertise and services that we do not have on staff.

That procurement process, which is under way, should take many of the months that bidders are asking us to give them anyhow in which to prepare their bids.

The reason I mention this concern, however, is that procurement processes occasionally do lead to court challenges. We are doing the best we can to make sure that we have a judicially infallible procurement process, but in the private sector, you know, I know that there are many firms that are habituated to litigating these issues, and I used to be in such a firm, and people have a fair opportunity to challenge procurements and we have no desire to take that away, but what I am only saying here is that it is conceivable that there would be other events outside of our control that might come in and affect the timing of the option.

Mr. FIELDS. Chairman Markey, I have a few other questions, but I will postpone at this time. Let me just close on this round on this particular issue, and I certainly don't want to speak for any other members, but I think that there is widespread feeling that this should proceed as quickly as possible.

You know, as an individual member, I am willing to work with you in any way possible to move this as expeditiously as possible, and also in a very professional manner, you know, with consider-

ation for this new generation service and all that it entails, and I recognize that this is something that we have not dealt with before, that we are actually plowing new ground.

Mr. MARKEY. The gentleman's time is expired.

The Chair recognizes the gentleman from Ohio,

Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman, and Chairman Hundt, I was following with great interest your discussion with Chairman Markey regarding the competitive mode in the cellular business, and obviously I, along with others, share that same excitement and interest in the competitive side of things, which seems in stark contrast to the overregulatory efforts in the area of cable. I am wondering, even in light of what I consider to be an overly regulatory regime in the 1992 act, what the FCC is doing to foster competition in the cable industry.

Mr. HUNDT. That is an excellent question, and I certainly know that you and I, Congressman, we have talked about this before, fully agree that the most important task that we have at the Commission is to try to foster competition and create consumer choice in the cable area.

One thing that we did was implement rules that freed up programmers from various exclusive contracts that had limited their ability to contract with alternative suppliers of video programming, whether wireless cable suppliers or cable overbuilders.

We don't yet have a full record on exactly how that has been implemented, but we have seen some anecdotal evidence to suggest that those program access rules have helped significantly.

Mr. OXLEY. Excuse me. That was in response to the Tauzin amendment?

Mr. HUNDT. I don't know—yes, I believe that is right. I don't know the full legislative history, but I believe that was called the Tauzin amendment, and that was implemented some time ago and the record is now being made.

Second, we are going to add resources to or take away resources from some areas and put them in the job of MMDS licensing so that we can expedite the number of license grants to the wireless cable industry. That is a potential competitor to cable that we believe should be encouraged.

It is also very much in my judgment in the public interest to have the bill that this committee has crafted become law so that there can be a greater possibility of competition in cable from telephone companies, and I certainly don't have to tell you the current status of that, Congressman, but consumers and the economy would very much benefit if a level playing field, but a competitive playing field, was created between the telephone industry and the cable industry.

Mr. OXLEY. Turning to the last year's supplemental, \$11.5 million to hire personnel at the FCC to handle the cable regulation. It is my understanding the \$11.5 million was appropriated for the purpose of hiring approximately 240 people.

Could you tell us, bring us up to date, as to how many people have been hired under that and how much money has been consumed so far?

Mr. HUNDT. In terms of the number of hires, that number would equal approximately 240 total FTE's. We are in the last stages of checking out references for, I believe, about 30, and when those offers go out and are accepted and we add those to those already hired, we will have about 160 on staff. So that should be within a couple of weeks.

We are up to about 160, leaving approximately 80 left to be hired, and we will complete that by the end of this fiscal year.

This has been a process that has been continuing for the last several months. One of the many subjects of education that I have had in the last 6 months is this subject of government hiring and just how slow and cumbersome it is, and I don't want to mince words here, it is not nearly what it ought to be, and this, of course, was addressed in the National Performance Review last year, but nevertheless, progress has been made.

I don't have for you an exact amount of money that has been yet spent, and if I can, I will provide that to you in writing.

Mr. OXLEY. We would appreciate that, at your convenience.

Let me ask you, based on the chart that you showed, if I understand your testimony correctly, the chart does not show the hires under the supplemental dedicated to the cable bureau; is that correct?

Mr. HUNDT. That is right. I was trying to use sort of an apples-to-apples type comparison.

Mr. OXLEY. So this level would be actually higher if we were to include the 180 that have already been hired?

Mr. HUNDT. Yes. Any—to adjust for cable, you would add 240 to any of those levels.

Mr. OXLEY. OK. Is it safe to say that with that—with the cable additions and the 60 more to come, is it safe to say that the FCC is the largest growing Federal bureaucracy in terms of percentages?

Mr. HUNDT. Well, I don't have a comparison. We probably, on the basis of the size of the Agency as a numerator and the size of the economy that we have any jurisdiction over as the denominator, we probably have the smallest fraction.

It is not something I have checked, but if I ever do check it, I will try to compare us to the Department of Agriculture probably.

Mr. OXLEY. It is interesting because I just saw an article in The Post that indicated the number of agriculture employees who had taken early retirement in the buyout program, some 3,300 of them or so, and my point was, just in the last 12 to 15, 18 months, whether, in fact, the rate of growth at the FCC was indeed perhaps the highest percentage. It is just food for thought.

Obviously my point is that the Cable Act mandated that kind of increase of the bureaucracy. You carry out your functions under the law. But my point is that that is what the Cable Act essentially brought about and created, and so those of us in Congress who tended to bemoan the bureaucracy and talk about all the waste that goes on in the bureaucratic side of things have some questions about that.

May I—if I am not—

Mr. HUNDT. If I am not interrupting you, there is something important I should say about our long-range planning here that I neglected to say earlier.

It is our hope that possibly paradoxically, but actually very sensibly, if we increase the number of people that we have to do our job right now, I believe we will more rapidly be able to decrease the number of people that we will need in more distant years.

The sooner we get more competition in cable markets, the less rate regulation we will need to do because once there is effective competition, there isn't rate regulation, and in out-years, hopefully not very far distant, we could be able to go out of the rate regulation business in a number of areas.

Our plan is not to build in a permanent bureaucracy in cable or telephone regulation or anywhere else, but rather, to get the resources we need now, move to competitive markets in all these areas, and as soon as we can decide that the competition all by itself will give choice and fairness to consumers, we can start getting out of the regulation business, and I think that the bill that this committee has authored, which is a bill that greatly will increase the speed in which competition will enter all these markets, is also a bill that will permit us to, for sure, not become a permanent regulatory bureaucracy.

Mr. OXLEY. If I could just conclude, Mr. Chairman. I know there is a vote on.

That was the right answer, and I am glad to hear that you are working—

Mr. HUNDT. Glad you gave me another chance.

Mr. OXLEY [continuing]. Working your way out of a job, as it is always the best way in government, and clearly we all share that same goal, that is, the efforts at a competitive mode versus the old regulatory burden.

I am sure the chairman of the committee shares that same goal as well.

Mr. MARKEY. I was seeking recognition in order to agree with that goal.

Mr. OXLEY. Let me yield then to the chairman.

Mr. MARKEY. I just wanted to make the point that I couldn't more wholeheartedly agree with any point that is going to be made this year than that which is being made by the gentleman from Ohio, Mr. Oxley.

No, no. The point that I am making is that there is a faster growing part of the bureaucracy, if that is what you would want to call it, and that is the 100,000 new police that we are going to put out on the beat to make sure that people in this country are protected against crime. Your whole Agency has how many people in it, Mr. Chairman?

Mr. HUNDT. About 2,000.

Mr. MARKEY. Two thousand people, and yet it has to police the fastest growing segment of the American economy. Those 2,000 people and the few additional people that we are making it possible for you to have over there, have a tremendous responsibility to do so many jobs simultaneously that you would be understaffed, in my opinion, even if we doubled your budget, which is not going to happen, and we agree on that as well.

Mr. OXLEY. Thank you, Mr. Chairman.

If I could just finish, this is a questionnaire that we do periodically in our district, and it was interesting to me, we asked this question to our constituents, got about 20,000 responses, "In 1993, Congress passed legislation reregulating the cable industry. If you are a cable subscriber, how has the legislation affected your cable rates and programming in recent months?"

Higher rates for less programming, 15 percent; higher rates for the same programming, 40 percent; rates have stayed about the same, 32 percent. That is a very interesting number.

Now, part of that is perception, I suspect, and part is fact, but I do think it shows that that is the perception, at least in our district, as to what effect the cable bill really had. I would just submit that for the record, Mr. Chairman.

I yield back the balance of my time.

Mr. MARKEY. The gentleman's 15 minutes has expired. Let me ask a quick question. Then we will take a break and we will come back, and we will pose some more questions to you.

It is my understanding that the Commission now has a number of applications pending for video dial tone. It appears that in processing these applications, the Commission has found the need to go back to some of the telco applicants and request additional information.

First, let me say that it makes perfect sense, given the huge amounts of money that are going to be invested in upgrades of video dial tone and new services, that the Commission has all necessary information to assess these applications.

In that regard, I point out that it may make sense to have generic rules in place to handle these applications instead of handling them on an ad hoc case-by-case basis.

Aside from the issue of generic rules, I want to focus on the question of consumer safeguards. As you know, the legislation approved by the committee, H.R. 3636, has an elaborate structure of safeguards to protect consumers as telephone companies get into the video business, including anti-redlining provisions.

This legislation in many instances requires the Commission to fill in the crucial details of those safeguards on cost allocation, accounting rules and other items.

My question is this: What steps has the Commission taken to insure that consumers are protected? Has the Commission consulted with State regulators on how these costs will be separated? Also, has the Commission reviewed how those costs are going to be allocated?

Clearly, the legislation directs the Commission to answer this question on a going forward basis. I would hate to have the Commission end run that process by moving forward in the next couple of weeks without the same kind of consideration.

Mr. HUNDT. Well, we will take very seriously under advisement your suggestion about the wisdom of rulemaking as opposed to relying solely on case-by-case adjudications.

We have had a very ample record made already and have a pending reconsideration on this issue.

For example, the adequacy of accounting and other safeguards has been an issue raised by petitions by the Consumer Federation

of America and by the cable industry who make very similar arguments with respect to telephone company entry.

The—possibly they come from different perspectives, but they make very similar arguments on this subject.

We have, under the leadership of Richard Metzker, the Acting Chief of the Common Carrier Bureau, formed up a task force to try to push as quickly as possible through the very complicated issues here the twin goals as you recognized, Mr. Chairman, are the promotion of greater competition in video programming, while at the same time protecting the telephone company ratepayers from any unfair burden of—in the nature of cross subsidy.

These are both very, very important goals, but are not easy goals to reconcile, and again, we are dealing with an issue brought to us by the phenomenon of conversions, brought to us by the new inventions that are capable of using the telephone system for new purposes.

I am sure we all agree that these inventions should be exploited, that the telephone networks should be used for all available purposes that can benefit the economy, but the issues of subsidy that are raised by these new inventions and by the entrepreneurial spirit that is willing to back them are new issues in significant part, and so we are trying to deal with them and moving as quickly as we can on them.

Mr. MARKEY. I hate to interrupt you at this point, Mr. Chairman, but there is another roll call on the Floor. Mr. Fields and I have about 4 minutes to get over there.

We will take a recess for about 15 minutes. We will come back and we will reconvene the hearing.

[Brief recess.]

Mr. MARKEY. Again, we apologize to one and all for the interruption, while the Members of Congress know how important it is on the Floor of the House of Representatives to make roll calls.

Let me turn now and recognize the gentleman from Colorado, Mr. Schaefer, for a round the questions.

Mr. SCHAEFER. Thank you, Mr. Chairman. I certainly want to thank Chairman Hundt and his Commissioners for testifying before us today, and as everyone else has said, welcome to two new Commissioners. I will begin by just saying, Chairman Hundt, I think you and I both agree one of the most important things that the Commission did this year was the roll-back on the cable rates a second time.

I disagreed very strongly with that roll-back and I want to get into a—it is kind of a long question, but I am sure that you will be able to handle it very well.

Earlier this week you suggested that you were considering tweaking the rate rules. I want to know what exactly that means, what your intentions are in that particular regard. Specifically, you seem to acknowledge that the FCC's new rules went a bit far and are providing significant disincentives to the cable systems wishing to add new programming and improve their service, both of which are benefits to the consumer.

Take, for example, a cable operator who wishes to add three new channels, each charging 10 cents per subscriber per month. Under the profit margin allowed by the FCC now, I calculate it will take

over a year for the operator just to recover the cost of the postage to notify the customers of the change.

In fact, with capital expenditures figured in, and we both know that capital is much harder to come by since reregulation and the roll-backs, one medium-size company in my district now calculates it would take 5 years just to break even on adding a new channel under the FCC's rules.

I would like to ask this question: these rules seem to be forcing new channels into the unregulated ala carte tier rather than allowing them to remain on the basic or expanded tier. I am not sure how this best serves the consumer.

In addition, the so-called going forward rules provide progressively smaller incentives to add new programming as the operator reaches capacity. This effectively prevents the investment in digital compression, another high-capacity system that will be necessary to compete in the future.

Would you now care to comment on what steps you looked to or are looking to to address these particular issues, Mr. Hundt?

Mr. HUNDT. Yes, Congressman. You are raising a crucial question.

I completely agree that we need an adequate package of incentives for cable operators to increase capacity. We need this as a country because as they increase capacity, they will be able to afford more avenues to consumers for cable programmers.

Also, as they increase capacity, they will be in effect building their part of the information highway because that increased capacity will further facilitate their ability to get into telephony and other interactive broad band services.

I don't think that there is just one thing that we should do to give cable operators the incentive to increase capacity. I think there probably are a multiplicity of different actions that we should take, and I and my fellow Commissioners are going to deliberate very carefully until we have an appropriate number of incentives in our package.

I don't want to suggest that in any way I believe that we should tweak or alter the 17 percent competitive differential. That matter is on its way up to the U.S. Court of Appeals for the District of Columbia.

I think that we did the right thing. Not everyone agrees, I acknowledge that, but the matter is up on judicial review.

The incentives package, however, we always have desired to continue to work on with the industry. Our three and a half page of going forward rules give us a broad framework for engaging in that kind of dialogue, and I believe a constructive dialogue with the industry.

Pursuant to that dialogue and pursuant to those rules, we were able to issue clarifications and other rulings that facilitated the addition of the FX channel within the last few weeks, the largest launch of a cable programming channel in history.

Similarly, we were able to facilitate the further addition of certain shopping services, but I don't believe that we should stop listening. I believe we should, if anything, intensify the listening we do to programmers and operators.

For example, when I was at the cable convention in New Orleans over the last couple of days, I was very much struck by the different views of more than 150 programmers, I think that was the number, who were down there saying that they thought we ought to explore different avenues to create appropriate incentives.

One programmer told me that he thought that a cable operator ought to be able to charge, in addition to the cost of programming, somewhere between two cents and a \$1.25 for adding that program onto the channel.

Well, I am not taking issue, but I did point out to him that was a big range, and it was going to be necessary for us to work with the industry to develop a conceptual approach or more than one conceptual approach to try to calculate what is the right package of incentives.

So I can only say, I completely agree with the thrust of your question.

Mr. SCHAEFER. Do you acknowledge the fact that if they only charge 10 cents per subscriber, it is going to take them forever to break even on these things? I am not saying they can charge \$1.25.

That is another matter, but it has to be something that is going to be in the category of allowing and making them want to provide another service to the consumer. If you can't do it in 10, it is going to have to be somewhere, 30, 40, 50, so they will go ahead and do it.

Mr. HUNDT. I am not taking—I am not taking issue with that.

Mr. SCHAEFER. I am not bound to that number by any means.

Mr. HUNDT. No, we are not in any way prepared, at least I don't think we are prepared, because we don't have anything like the record that you would need in terms of input.

What we have been told, at least what I have been told by programmers and operators, is that the appropriate incentives depend in significant part on the number of subscribers for a particular cable operator, the number of channels, the difficulty in upgrade.

In other words, everyone would like a simple solution, but no one in the industry thinks there is a simple solution. They think that the solutions vary according to the different circumstances of each operator.

If we want all cable operators to be able to participate in expansion and innovation and give us the full vigor of their competitive force in telephony markets and other interactive markets, which I think we do, then we need to think of incentive solutions that really do fit all of the different, and unfortunately or fortunately, very different circumstances of the different operators.

So that is the kind of discussion that we all had and learned a lot from in New Orleans and that we continue to want to have and that we will have with the industry.

Mr. SCHAEFER. Would any of the other Commissioners care to comment on this? I know they probably haven't been here long enough to do it, but Mr. Barrett.

Mr. BARRETT. I am not sure where you get your numbers from, but I guess if you are talking about—let me make a distinction for you in terms of the cost and how one recovers those costs.

If you are talking about a large diversified company like one in your State, TCI or Time Warner, I think clearly it would be rather

difficult to accept those numbers that you put forth. But if you are talking about a small independent program, clearly that may in fact be the case.

Mr. SCHAEFER. That is what I said, a medium size.

Mr. BARRETT. I do not think that applied to the larger people who have access to capital and are diversified, but I think it may be true, but I think the chairman is absolutely right in his overview, but I do think if you throw those numbers out, you better make distinctions between the large diversified and the small independent ones.

Mr. SCHAEFER. And I acknowledge that and I just wanted to make sure that this was brought up because this is something that definitely has to be addressed.

Are we under a 5-minute rule, Mr. Chairman? I have one other question here. We have talked about this before, Mr. Chairman, about the burden that we are putting on our small and mid-sized cable companies. I am not the only one who is concerned with that.

Mr. Richardson mentioned it as well. Let me just ask this question: Now, I applaud the Commission decision to grant this grace period until July 14th for restructuring rates, but I am concerned with the situation in which cable operators choose to change from benchmark rate justifications to cost of service rate justifications.

First, in this case, does the July 14th deadline for cost of service refilings apply or does the June 14th deadline for benchmark refilings apply? And given the complex nature of the cost of service, would the FCC consider extending the deadline for the filings to August 15th if the cable operator agrees not to increase rates from their current level?

If you can't answer it right now, if you could get an answer for us?

Mr. HUNDT. Why don't I give you a very detailed answer in writing.

Let me just say one thing now and then stop talking, and that is, I think it is very important that small operators, and I don't mean large MSO's that consist of many small systems, but I mean true small businesses, recognize that we very, very much want to work with them on a personal, individual basis and deal with all of their issues, whether they are cost of service or adding programs or EEO or whatever it is, and if you don't mind me taking the occasion of this hearing to publicly emphasize this, I would very much appreciate it.

We will, in fact, be establishing a dedicated hotline just for those very small businesses so that they have someone personally responsible for making sure that they get through this transition period successfully at the FCC and they will have a personal contact through—

Mr. SCHAEFER. That is commendable, and if could you get me, with the chairman's permission, or to the committee, an answer to this, but I understand we have to have it before the 14th of June, the filing deadline.

Mr. HUNDT. You can have it next week.

Mr. SCHAEFER. I appreciate it very much.

Mr. MARKEY. The gentleman's time is expired and we would ask for an expeditious response. Next week would be great to the gentleman from Colorado.

If you could send a copy to the subcommittee as well, I would appreciate that.

Let me recognize the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman.

Let me just say that due to the lateness of the hour, in all probability, there will be other members who have questions that they would like to submit to the Commission, and I hope the record will remain open for the response.

Mr. MARKEY. Without objection, the record will remain open.

Mr. FIELDS. Mr. Chairman, just one area I want to explore with you, and you know, like Mr. Schaefer, this may not be an area where you can comment today, but I want to bring it to your personal attention, and it was brought to my attention yesterday by some Texas broadcasters, and it revolves around a recently adopted policy statement on Equal Employment Opportunity enforcement, and if the fact situation as was explained to me is accurate, it is something that I hope you will become personally familiar with because it appears that there was a policy statement that was not put out for public comment, but a policy statement that, in essence, being applied as a rule, and a policy statement that is being applied retroactively, and there is a real concern among some of the smaller broadcasters in Texas, you know, coming from smaller areas where there may not be the opportunity to recruit as there might be in a larger urban area, some of the smaller stations not having the resources that perhaps some of the larger broadcast entities would have, but it is a situation that is of great concern, as I understand, not just in Texas, but across the country, and I would certainly appreciate any thoughts you have on this particular matter.

In fact, I have a letter that will be coming to your office sometime in the next week or so on this particular subject and, again, I can't expect you to respond to this today, but I do want you to be aware that some of us are concerned and some of us will be putting letters your particular way and hoping that you can respond and look very closely at this.

Mr. HUNDT. I will be delighted to do so. I met with the Texas Broadcasters Association myself, I think it was yesterday.

It was the same day that you met with the same people. One of them from up in the Panhandle area, and they do raise some specific and important issues about their access to labor markets and whether the policy statement which gives us guidelines is appropriately flexible to deal with those kinds of labor pool issues, and we will be looking into that and I very much appreciate your letter.

Mr. FIELDS. Let me just also, if the facts are correct, not just the fact of the pool of potential employees in a given area, but the methodology in which the complaint was filed, you know, initiated from Washington back to Texas finding the right complainant.

It is not a process I think you would be in favor of, again, if the facts are as they were stated to me. And so I hope you will look not only at our specific situation in Texas, but at this policy statement and how it is being administered.

Mr. HUNDT. We will do that.

Mr. MARKEY. Mr. Chairman, as you know, the subcommittee has a longstanding interest in HDTV stretching back to 1987 when I first became chairman.

You also know broadcasters have recently asked for flexibility in HDTV. While the subcommittee is interested in providing some flexibility, we specifically preserve the FCC's discretion in moving to HDTV.

Some have recently suggested that broadcasters be allowed to forego HDTV and instead use the spectrum to squeeze three or four or more digital NTSC quality channels into the additional six megahertz.

I would like to ask you generally what your plans are for HDTV and for spectrum flexibility.

Mr. HUNDT. Well, generally we continue to put great reliance on the process instituted by my predecessors, that is, the process in which the Grand Alliance, as it is now called, a collection of manufacturers and other experts, will generate an industry consensus on what are the appropriate standards to set for a signal transmission and reception.

I am informed, Mr. Chairman, that the estimated date now for the Grand Alliance to complete its work is approximately next spring, assuming that they stick to that schedule, and they have every incentive to go as fast as possible because it is those same companies that would be making the products that would be fostered by high-definition television.

Assuming they stick to that schedule, then at that time, we would expect to be able to make the record that would permit us to tee up our decisions and the five Commissioners could deliberate and reach resolution on that.

It would also be at approximately that time that we would be able to collect the views of the many, many different people in this country who are going to want to participate in this, including broadcasters and including representatives of the computer industry, which, as you know, Mr. Chairman, is increasingly interested in—their relationship to HDTV.

Mr. MARKEY. Again, that becomes part of our problem. You know, the Grand Alliance reminds me of that old phrase, the Holy Roman Empire, where it is neither holy, Roman, nor an empire, and Grand Alliance can sometimes be misnomer with regard to who is in and who is out, and not everyone is necessarily in agreement with the decisions that are being reached, and we want to make sure there is a broad policy.

Should the broadcasters be able to use this spectrum for other purposes without adopting HDTV?

Mr. HUNDT. Well, of course your legislation, you know, has features in it that relate to this issue and would delegate substantial responsibilities to us, and I would very much like to hedge to the degree of saying we would like—if that legislation became law, we would want to make the full record before taking on any delegated duties that your bill, that law would give us.

Generally speaking, I think it is perfectly sensible to receive all the views that may be generated, particularly from the technical experts, on how to make maximum use of spectrum.

If it is possible for a broadcaster to make a commitment to implementing high-definition television while not in any way inconsistently suggesting a way to simultaneously use the same spectrum so as to add additional revenue streams, that sounds like a very appealing idea from the public policy perspective.

Frankly, it will require much more detailing and much more written comment on the record before anyone, I think, would be capable of making definitive decisions on this subject.

Mr. MARKEY. And do you agree with the language which we included in the legislation which would require the Commission to charge the broadcasters for any spectrum used for subscription services?

Mr. HUNDT. I think you are moving in a very wise direction.

Mr. MARKEY. Thank you.

Let me move on just very briefly to children's television, then recognize the gentleman from California.

As you might be aware, this subcommittee conducted an oversight hearing last year on the Children's Television Act of 1990. Many of us were concerned that the amount of children's educational programming available on broadcast television had not changed in response to the act.

This is of particular importance given our ongoing concern about the development of a society of information rich and information poor. In fact, in many cases, broadcasters were simply redefining existing programs as educational.

For example, the Jetsons teaching children about life in the 21st Century, the Flintstones teaching about prehistoric times, and Yogi teaching about our wonderful system of national parks.

As you can imagine, this subcommittee is a little bit skeptical about the redefining of existing programs to meet the educational and informational objectives which the 1990 Children's Television Act intended to achieve.

The specifically defined design language to serve the educational and informational needs of children in our opinion still is not being met. We are going to have another hearing on this subject with broadcasters on June 10th, and I know that you are going to hold hearings to collect views on your pending notice of inquiry on June 28th.

Recognizing that you would want to withhold specific judgments until after the hearing, I am interested in the views of the two new Commissioners on this subject of children's television, and how you believe we should be dealing with the role that broadcasters play in our society in insuring adequate levels of children's television.

Ms. NESS. I am very much looking forward to the hearings to determine on the record what the issues are, how we can best work to get better programming. I know I have two children, I am concerned very much about it.

I have great respect for the First Amendment, but I think that there are a lot of things we can do to encourage much better programming than presently exists. I find my children don't spend a lot of time watching TV because there is not much there that they can watch.

Mr. MARKEY. Commissioner Chong?

Ms. CHONG. I share Commissioner Ness's concern about children's TV. As a matter of fact, I read the Children's TV Act quite closely before my Senate confirmation hearing in order to be familiar with it.

I was struck by all the good things I found in it, which is to encourage more rich programming for our children.

I hope to learn more about this as I get into my new job, and I hope to help in improving the programming for our Nation's youth.

Mr. MARKEY. Thank you. My time has expired.

Let me recognize the gentleman from California, Mr. Lehman.

Mr. LEHMAN [presiding]. Thank you, Mr. Chairman. I will be very brief.

I welcome the members of the Commission here.

Chairman Hundt, I understand the FCC is in the process of completing its study regarding the migration of sporting events away from free over-the-air television.

As you know, my office was deeply involved in making sure that was included, that study was included in the 1992 Cable Act.

I would just like to know briefly how that study is progressing, and in analyzing the issue of preclusive contracts, are you going to give significant weight to the fact that viewers both rich and poor should be able to see their games played on free over-the-air TV?

Mr. HUNDT. I am glad you mentioned this subject, Mr. Congressman. It is very important to us. It will be on our agenda June 9th, and we will then be able to make public at that time our deliberations.

I am glad to say we will meet the deadline by about 3 weeks, I think, that I am sure you have had a hand in putting in the statute.

I think it is an important issue, and I hope that our report answers many of the questions that you have raised in the past, and I certainly will look forward to hearing from you pursuant to your own review of that report.

Mr. LEHMAN. Thank you very much. I look forward to reading that. It is just a couple of weeks, right, June 9th? Thank you.

Who is in charge here? Mr. Fields, would you like to say anything?

With that, the hearing is adjourned.

[Whereupon, at 5:25 p.m., the subcommittee was adjourned.]

[The following responses to subcommittee questions were received:]



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 13, 1994

The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications  
and Finance  
Committee on Energy and Commerce  
U. S. House of Representatives  
Washington, D. C. 20510

Dear Chairman Markey:

Enclosed are the responses to the questions submitted by the Subcommittee as a follow-up to the Commission's authorization hearing. Please call upon me if I can provide any further information that will assist the Subcommittee in its consideration of the matters relating to this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed E. Hundt", written in a cursive style.

Reed E. Hundt  
Chairman

Enclosure

**QUESTIONS from Chairman Edward J. Markey**

**Question 1. With respect to the Commission's decision making process, please provide the following information:**

**a) How many Commission decisions are subject to petitions for reconsideration? Please identify them.**

**Answer:** Under Section 405 of the Communications Act, virtually all Commission decisions are subject to a petition for reconsideration and the number fluctuates dramatically during a given timeframe. We are compiling a list of decisions where a petition for Reconsideration has been filed and will submit it to the Subcommittee shortly. Summarized below are those areas of Commission activity which represent the bulk of the current decisions under reconsideration.

**COMMON CARRIER**

The Common Carrier Bureau has 71 petitions of reconsideration pending. Many of the proceedings involve multiple parties seeking reconsideration. Additionally, there are 5460 cases seeking reconsideration of staff dismissal or return of MMDS applications.

Policy and Rulemaking Proceedings Include:

Caller ID; Local Multipoint Distribution Service (LMDS); Rate of Return; Shared Network Facilities Agreements (SNFAS); Multipoint Distribution Service; Credit Card Validation BNA for Joint Use Cards; Telephone Consumer Protection Act. Hearing Aid Compatibility; Indecent Communications by Telephone; Part 25 Rulemaking; Expanded Interconnection; Transport Charges; Dark Fiber; Short Notice Tariffs; Video Dialtone; 900 Preemption; BOC Safeguards; 800 Restructured Services; Depreciation Range Approach; Litigation Costs; 5% Benchmark in QB&C; International Accounting Rates; Call-Back Decision; Optel's Conditional Cable Landing License; and Operator Transfer Service.

**MASS MEDIA**

There are petitions for reconsideration pending in 12 Commission policy and rulemaking proceedings involving mass media activities. Additionally, there are approximately 54 petitions for reconsideration pending in connection with Mass Media Bureau enforcement matters and broadcast applications proceedings.

Policy and Rulemaking Proceedings:

AM Expanded Band; Financial Interest and Syndication (MM Docket No. 90-162); EEO in Broadcast Radio and TV Services; FM Class A Station Power Increase; FM Booster Stations, Radio Ownership Rule Revisions (MM Docket No. 91-140; Advanced Television Service; Remote Pickup; Television Satellite Stations; FM Station Modifications; Protection of Land Mobile Operations (Channels 14-69); and Codification of the Commission's Political Broadcasting Policies.

Enforcement and Applications Proceedings:

Petitions to reconsider EEO sanctions against broadcast stations and cable television systems - 43; reconsideration of a complaint resolution involving the Commission's political broadcasting regulations - 1; reconsideration of forfeiture imposed upon a broadcast station for violation of the Commission's rules - 1; waivers of the freeze on the filing of applications for new television stations - 3; waivers of the freeze on filing applications proposing "satellite" television operation - 1; reconsideration of Commission actions in connection with applications to construct and operate radio stations - 5.

**CABLE SERVICES**

The Cable Services Bureau has 266 petitions for reconsideration pending. The subject matters address Cable Programming Service Complaints; Must Carry; Commercial Leased Access, Program Access; Going Forward Issues; Benchmark, Cost-of-Service; Cross Ownership with MMDS/SMATV; Certification; Cable Home Wiring; Customer Service Standards; Horizontal and Vertical Integration; Indecency and Tier Parallelism.

**PRIVATE RADIO**

There are eight petitions for reconsideration pending in 8 Commission proceedings involving private radio activities.

Policy and Rulemaking Proceedings

Licensing of non-commercial channels at 220-222 MHz; Requirements to implement a global distress and safety system; "Finders preference" program details; Emergency Medical Radio Service Rules; 900 MHz Private Carrier Paging; Amateur packet radio techniques; Implementation of Sec.3(n) and 332 of the Communications Act; and Auctioning of Interactive Video Data Service frequencies.

ENGINEERING AND TECHNOLOGY

There are eight petitions for reconsideration of Commission decisions pending. These are Narrowband Personal Communications Services (PCS); Pioneer's Preference Review; Emerging Technologies; Pioneer's Preference for Broadband PCS and two proceedings related to Low Earth Orbit Satellites (LEOs).

OFFICE OF PLANS AND POLICY

There are presently four petitions for reconsideration pending in matters relating to the Office of Plans and Policy. These are the First Report and Order (unjust enrichment rules for lotteries), the Second Report and Order (generic auction rules and procedures), the Third Report and Order (service specific auction rules for narrowband PCS), and the Fourth Report and Order (service specific auctions rules for IVDS).

**b) From June 1, 1993, to June 1, 1994, what was the average length of time between the date of a Commission decision and the date the text of the decision was released? What was the median length of time? How many decisions were released in excess of 30 days? How many in excess of 15 days?**

**Answer:** From June 1, 1993, to June 1, 1994 the Commission released 389 decisions. The average length of time between the date of a Commission decision and the date the text of the decision was released was 14 days. The median length of time was also 15 days. 24 decisions were released in excess of 30 days. 157 decisions were released in excess of 15 days.

**c) How many decisions are on "circulation"? How does this number compare with the number on circulation on January 1, 1994, and June 1, 1993?**

**Answer:** There were 63 decisions on circulation as of June 21, 1994. There were 97 decisions on circulation on January 1, 1994, compared to 113 decisions on circulation on June 1, 1993.

**Question 2. A number of other regulatory agencies release the text of their decisions on the day or within 24 hours of the day that such agencies announce their decisions. The Commission does not. The advantage of releasing the text of the decision at the same time is obvious: the public and interested parties understand fully the holding of the agency and not just the broad contours of the decision as set forth in a press release. Moreover, the Commission immunizes itself from any suggestion of impropriety with respect to the drafting of the text of the decision after the decision has been announced. Please explain the Commission's current practice, and please address why it should not be altered so that the Commission releases the text of the decision contemporaneously with the decision.**

Answer. The Commission's general practice is as follows. The relevant Bureau or Office prepares a draft decision document (for example, a draft Report and Order or a draft Notice of Proposed Rule Making) that it provides to the Commissioners as its recommendation. When the Commissioners vote on the draft item, they often recommend that the text of the item be edited in certain respects. Once all Commissioners have voted on the item, the item is deemed to have been adopted if a majority of the participating Commissioners have voted in favor of the item. The Bureau or Office that drafted the item is then responsible for ensuring that all the Commissioners' edits (as well as any staff edits) are made and, to the extent they are substantive, are approved by all the Commissioners. This process often takes several days after adoption, and, on occasion, even longer. Most items adopted through the circulation process require an additional three days longer because they are sent to the Department of Commerce for a printing process less expensive than in-house printing by the Commission.

The current process has evolved due to the complexity of the matters handled by the Commission and the active role played by each Commissioner. It ensures that each Commissioner has an opportunity to have full input into the process. While I do not believe that it is appropriate to revise the entire system, I do agree more items should be released more promptly. In this regard, we are making efforts, and will continue to make efforts, to expedite the process so that items can be released more promptly.

**Question 3.** Some persons have expressed concern over isolated reports of bankruptcies occurring in the cable industry. How many bankruptcies have occurred in the cable industry in 1994? How many have occurred in the cable industry annually, for the past five years? How does this failure rate compare with other comparable businesses? What has the Commission done and what is it prepared to do in order to minimize the impact of any government actions on cable operators who might otherwise be financially unstable?

Answer: The threat of bankruptcy is one which the Commission takes seriously. Reports of bankruptcy in the cable industry are, as the questions states, "isolated". There is no industry-wide data that would enable us to provide the number of bankruptcies that have occurred in 1994, during the past five years, or how the industry's failure rate might compare to other comparable businesses. To our knowledge, no industry studies have been conducted by major research companies, and the primary trade associations have not conducted studies or compiled data focusing on bankruptcies in the cable industry. The record for the Commission's recent cable rate rulemaking proceeding and related press accounts have focused on the impact of rate regulation on investment in cable operations, cash flow threats, limited revenue sources, and *possible* bankruptcy filings. These reports give no indication of whether any cable companies have *actually* filed for bankruptcy. Moreover, the finding of a bankruptcy petition has a number of

causes, many unrelated to the regulated nature of the industry. The Commission is aware that two cable companies have filed for Chapter 11 reorganization during 1994.

Since initial rate regulations went into effect last September, the Commission has made available several procedures to assist operators experiencing financial hardship. Cable companies that would have inadequate rates under the benchmark approach to rate regulation may file cost of service showings to justify higher rates. The Bureau has and continues to work with both operators and industry representatives on hardship submissions through the use of both regional seminars and private meetings. Finally, Bureau has set up a "hotline" for operators who may be facing difficulties, including financial difficulties, so that their problems can be addressed on a priority basis.

**Question 4a.** How many complaints have been filed with the Common Carrier Bureau in fiscal year or calendar year 1993? What is the average length of time for these complaints to be resolved?

**Answer:** The Commission entertains two types of complaints against common carriers: "informal" and "formal". Informal complaints far exceed the volume of formal complaints.

The informal complaint process is available to all members of the general public, including common carriers and corporations, although informal complaints are generally filed by consumers. Parties filing informal complaints are not required to file any special forms or pleadings nor are they required to pay any filing fees. The staff of the Common Carrier Bureau's Enforcement Division works closely with the relevant carriers in investigating and resolving informal complaints.

During fiscal year 1993 (FY-93), the Common Carrier Bureau received approximately 11,600 written informal complaints, an increase from FY-92, when approximately 10,400 written informal complaints were received. Of these, approximately 9,200 were officially closed in FY-93, in an average of 190 days from date of receipt. In addition, many complaints were resolved before the case files were officially closed. It is estimated that about 60 per cent of the FY-93 written informal complaints were served by Common Carrier Bureau staff on carriers for investigation of complaint allegations. In approximately 50 to 60 per cent of these cases, complainants received some type of relief prior to the time the cases were deemed officially closed. In total, during FY-93, roughly 13,500 written informal complaints, including ones filed before FY-93, were resolved in an average of 315 days. In addition to written informal complaints, the Common Carrier Bureau also received and processed approximately 20,400 telephonic complaints and inquiries in FY-93.

The formal complaint process, by contrast, is much more complex, both procedurally and substantively. A formal complaint filed under section 207 of the Communications Act is an alternative to federal district court litigation. As with such litigation, these complaints are subject to very specific pleading, filing, reporting and discovery requirements. Parties filing formal complaints are required to pay filing fees and the complaints are deemed restricted adjudicatory proceedings for *ex parte* purposes. While the formal complaint process is available to all members of the general public, these complaints are generally filed on behalf of other common carriers or large corporate customers. Although the volume of these complaints is substantially lower than for informal complaints, resolution generally takes longer because of the complex legal and factual issues usually raised.

In FY-93, the Bureau received approximately 170 formal complaints. Of these, 51 have been resolved to date, in an average of 195 days. In total, during FY-93, approximately 330 formal complaints, including ones filed prior to FY-93, were resolved in an average of 393 days. Roughly 290 of these complaints were subject to the 12 to 15 month statutory deadlines contained in section 208(b) of the Communications Act, and were resolved in an average of 331 days. The remaining resolved complaints, which were not subject to statutory deadlines, were resolved in an average of 896 days. These cases include complaints where resolution was deferred at the request of the parties and where resolution was dependent upon the outcome of other FCC proceedings.

**Question 4b.** How many certifications to regulate basic cable rates have been filed by local municipalities with the Commission? If substantially all communities have not certified, what actions does the Commission plan to increase this number?

**Answer.** As of June 22, 1994, the Commission received a total of 6,074 requests for certifications from franchising authorities that wish to regulate basic cable service rates. Approximately 95% of these certifications have become effective. The Commission has taken a number of steps to encourage and assist franchising authorities to become certified to regulate basic cable rates. For example, the Commission's Cable Services Bureau has released fact sheets and other guides designed to address franchising authorities' questions regarding certification procedures as well regulation of rates. In addition, the Bureau held seminars in Boston, Chicago, Kansas City, Missouri, San Francisco and Atlanta to explain the rate rules to state and local governments and to encourage them to play an active part in protecting consumers' interests by becoming certified. The Bureau has also set up a special telephone line that local governments can call for assistance in rate regulation. That number is (202) 416-0940. In addition, Bureau staff have met on numerous occasions with representatives of local regulatory organizations to discuss cable rules and forms. Finally, the Bureau's Consumer Protection Division is divided into four regions to allow franchising authorities "one stop shopping" with their concerns and questions on certification and other rate regulation issues.

**Question 5. How many Section 214 applications have been filed with the Common Carrier Bureau in fiscal year or calendar year 1993? What is the average length of time for these applications to be handled?**

**Answer:**

**Video Dialtone Section 214 Applications**

In fiscal year 1993 (FY-93), seven video dialtone Section 214 applications were filed with the Commission. Of these seven applications, four have been granted. The average video dialtone Section 214 application processing time, from filing date to grant of authority, was six months.

**International Section 214 Applications**

In fiscal year 1993 (FY-93), 331 international Section 214 applications were filed with the Commission. The average international Section 214 application processing time, from filing date to grant of authority, is 93 days.

**Domestic Section 214 Applications**

In fiscal year 1993 (FY-93), 45 routine domestic Section 214 applications were filed with the Commission. The average domestic Section 214 application processing time for routine applications, from filing date to grant of authority, was 45 days. In addition, 11 contested domestic Section 214 applications were filed with the Commission during FY-93. The average processing time for these contested applications, from filing date to grant of authority, was 239 days. Five of these contested applications remain pending.

**Question 6. The Commission has before it a number of Section 214 applications for video dialtone.**

**a) Please provide the Subcommittee with a table that identifies each section 214 application, the date it was filed, the date it was considered complete, the applications that needed additional information, the company that filed, the geographic area covered by the application, and the number of persons affected by each application.**

**Answer:** Please refer to attached chart.

## VIDEO DIALTONE APPLICATIONS

FILE NO.	FILING DATE	APPLICANT & LOCATION	DATE OF DISPOSITION	ADD'L INFO REQUEST	SIZE (homes)
6834	10/21/92	Bell Atlantic/C&P Tel. (Arl., VA)	3/25/93	X	400
6836	10/30/92	NYNEX: New York Tel. (NYC)	6/29/93	X	2,500
6838	11/16/92	Bell Atlantic: NJ Bell (Florham Pk.)	7/28/93*	X	11,700
6840	12/15/92	Bell Atlantic: NJ Bell (Dover Twp.)	7/28/93*	X	38,000
6858	4/27/93	SNET (W. Hartford, CT)	11/12/93		1,600
6867	6/18/93	Rochester Tel. (Rochester, NY)	11/9/93**		350
6868	6/22/93	U S WEST (Omaha, NE)	12/22/93	X	60,000
6838	9/2/93	Bell Atlantic/NJ Bell (Florham Pk.) (amendment)		X	11,700
6840	9/2/93	Bell Atlantic/NJ Bell (Dover Twp.) (amendment)		X	38,000
6834	11/9/93	Bell Atlantic/C&P Tel. (Arl., VA)		X	2,000
6867	11/9/93	Rochester Tel. (amendment)	3/25/94		120
6858	12/15/93	SNET (Hartford & Stamford, CT areas) (amendment)		X	150,000
6912	12/16/93	Bell Atlantic/C&P Tel. (Wash., DC LATA)			300,000
6913	12/20/93	Pacific Bell (Orange County, CA)			210,000
6914	12/20/93	Pacific Bell (So. San Francisco Bay)			490,000
6915	12/20/93	Pacific Bell (Los Angeles)			360,000
6916	12/20/93	Pacific Bell (San Diego)			250,000
6919	1/10/94	U S WEST (Denver)		X	330,000
6921	1/24/94	U S WEST (Portland, OR)		X	132,000
6922	1/24/94	U S WEST (Minneapolis-St. Paul)		X	292,000
6926	1/31/94	Ameritech (Detroit)		X	232,000
6927	1/31/94	Ameritech (Columbus & Cleveland)		X	282,000
6928	1/31/94	Ameritech (Indianapolis)		X	115,000
6929	1/31/94	Ameritech (Chicago)		X	501,000
6930	1/31/94	Ameritech (Milwaukee)		X	146,000
6944	3/16/94	U S WEST (Boise, ID)		X	90,000
6945	3/16/94	U S WEST (Salt Lake City, UT)		X	160,000
6949	4/13/94	Puerto Rico Tel. Co.			250
6955	5/23/94	GTE - Contel of Virginia, Inc. (Manassas, VA)			90,000
6956	5/23/94	GTE Florida Inc. (Pinellas & Pasco Counties)			476,000
6957	5/23/94	GTE California Inc. (Ventura County)			122,000
6958	5/23/94	GTE Hawaiian Tel. Co. (Honolulu area)			296,000
6912	6/16/94	Bell Atlantic/C&P Tel. (Wash, DC LATA) (amendment)			1.2 million
6966	6/16/94	Bell Atlantic (Balt., No. NJ, Phila./Del., Pitt., SE VA)			2 million
6977	6/27/94	BellSouth Telecom., Inc. (Chamblee & portions of Dekalb Cty., GA)			12,000

\* On July 28, 1993, the Commission issued a letter to New Jersey Bell finding that the applications, as filed, did not contain a level of specificity necessary to enable the Commission to make a decision. The Commission gave New Jersey Bell 45 days to amend its applications. New Jersey Bell filed amended applications on September 2, 1993.

\*\* On this date, Rochester Telephone filed an amended video dialtone application, superseding its initial June 18, 1993 application.

**Question 6. b) Prior to granting applications for commercial service, what steps has the Commission taken to ensure that telephone rate-paying customers are protected? Has the Commission consulted with state regulators on how these costs will be separated? Also, has the Commission reviewed how these costs are going to be allocated?**

**Answer:** The Commission found in the 1992 Video Dialtone Order that, in the first instance, its existing rules and regulatory safeguards will protect consumers and competitors against anticompetitive behavior, including unlawful discrimination and improper cross-subsidization. These safeguards require carriers to comply with rules governing uniform cost accounting and cost allocation standards, the allocation of joint and common costs, affiliate transactions, and nondiscriminatory reporting standards. Many of these existing rules, such as the rules governing jurisdictional separations of costs, were developed in consultation with State regulators. In addition, State regulators have filed comments in the video dialtone proceedings, including Petitions for Reconsideration of the Video Dialtone Order and comments on a Joint petition for Rulemaking filed by the Consumer Federation of America and the National Cable Television Association.

The Commission also stated that in authorizing particular video dialtone proposals, it would examine whether any additional safeguards were appropriate for those video dialtone operations. For example, in authorizing specific video dialtone applications, the Commission has imposed special conditions designed to protect consumers from improper cross-subsidization. To date, carriers authorized to conduct video dialtone trials have been required to segregate video dialtone costs from other telephony costs and ensure that the costs associated with construction and operation of the video dialtone systems are not borne by telephone ratepayers. The Commission has thus indicated that shareholders, rather than telephone ratepayers, should be expected to bear the risk of investment in video dialtone trial facilities. The Commission has also conditioned the grant of all video dialtone applications upon telephone company compliance with any regulatory safeguards and pricing rules that may be adopted in the future.

On July 6, 1994, the Commission authorized the first commercial offering of video dialtone service for Dover Township, New Jersey. The text of that decision has not yet been released. As soon as it is released, we will provide a copy to the Subcommittee.

**Question 7. In 1990 the Commission adopted price cap rules for large local exchange carriers. In recent years, thanks in part to the declining cost nature of the industry, price cap LECs have enjoyed increased earnings over recent years. In the next year the Commission will be reviewing its LEC price cap rules. Do you think the Commission should look to the declining cost nature of the industry in establishing revised price cap rules?**

**Answer:** The Commission's price cap plan for LECs is based on the premise that LECs can reduce their costs and that this efficiency gain should lower customer rates. Under the current price cap rules, carriers are subject to an annual productivity factor that lowers rates in real terms at least 3.3% per year, while also requiring sharing of earnings in many cases.

In the January, 1994 Notice beginning the pending fourth year performance review of the LEC price cap plan, the Commission noted the increase in the rates of return earned by the LECs under price cap regulation and the decline in interest rates during this period. The Notice specifically requested comments on whether the profit levels of price cap LECs are reasonable under the current price cap plan; whether the productivity factor used to compute the LEC price cap indices should be changed; whether a one-time change in the LEC's price cap index should be required, and if so, what effect such change would have on price cap baskets and service categories; and whether the Commission should adopt a mechanism to adjust the price cap plan to reflect changes in interest rates.

We are currently examining the comments on these and other issues in the LEC price cap performance review. The Commission remains committed to preserving and improving price cap incentives while assuring just and reasonable rates.

**Question 8.** The decision to reconstitute the Network Reliability Council means the critical issue of network quality and service reliability will get the high-level attention it deserves. One suggestion raised by many in the user community, and which came to the attention of the Subcommittee as a result of a staff investigation last Congress, is the lack of service quality standards in the tariffs of telecommunications common carriers, especially carriers which provide a monopoly service. What are your thoughts on this important suggestion?

**Answer:** The Common Carrier Bureau has previously determined that service quality standards should not be included in tariffs that are filed at the FCC. The Bureau found, among other things, that requiring service quality standards would be inconsistent with the public interest because it would, in effect, dictate uniform national standards rather than permit standards to evolve in accordance with marketplace forces. In an Application for Review of that decision, the Telecommunications Association (TCA) argues that the requirement that LECs publish their internal standards in their annual access tariffs is needed to ensure acceptable service quality. In addition, in 1992, the International Communications Association and the Consumer Federation of America filed a Joint Petition for Rulemaking, requesting that the Commission require price cap LECs to include their internal service quality standards in their annual access tariffs. The Commission is currently reviewing the contentions of the parties in connection with these filings.

The Commission has taken steps to ensure that it can monitor the quality of service provided by the largest local exchange carriers and assess their ongoing

investment in the nation's telecommunications infrastructure. In May, 1991, the Common Carrier Bureau released the Service Quality Order which requires price cap exchange carriers to submit periodic reports concerning various measures of service quality (e.g., information on installation and repair intervals, switch downtime, transmission quality and trunk blockage) and infrastructure development (e.g., information on number of switches and lines in service by type of switch, capability, and call set-up time tables). On reconsideration in 1992, the Commission solicited comments from interested parties on additional proposed modifications. In October, 1993, the Commission adopted further revisions to certain reporting requirements, including the requirement that LECs report actual performance rather than percentage of commitments met. The Commission deferred for future consideration reporting requirements on the quality of high-speed data transmissions, such as bit error rates and modification of the LEC call set-up time report.

**Question 9.** Since the Commission put in place a reporting requirement for network outages, how many outages have involved i) air traffic control facilities, or ii) nuclear power plants? Please identify the date and time of the outage, the cause, and provide the Subcommittee with the incident report for each such incident.

**Answer:**

**Air Traffic Control Facilities**

The Commission's reporting rules currently do not require the reporting of outages to airports or air traffic control facilities. The Commission has, however, proposed to adopt such a requirement in a Notice of Proposed Rulemaking that was released on December 1, 1993. The Commission expects to act on this Notice in the near future. The agenda for the Commission's July 14, 1994 meeting includes consideration on network outage reporting requirements. Carriers have voluntarily provided reports of significant outages affecting major airports since June 1, 1992, however, as recommended by the Network Reliability Council. In addition, the FCC has obtained additional information on such outages from the Federal Aviation Administration. The Commission also investigates outages that could potentially affect airports even if they are not deemed "major airport-affecting."

To the best of our knowledge, these are the three outages that have significantly affected air traffic control facilities since June 1, 1992. In addition, the Commission has investigated other outages which do not qualify as "major airport-affecting" but which may have affected airports. We can supply the Subcommittee with this information if desired.

Major Airport-affecting Outages

## 1. September 5, 1992:

## INCIDENT:

The Federal Aviation Administration (FAA) facility at Auburn, Washington, lost 11 T1 lines. Although there were flight delays, the FCC concluded that the outage was not reportable under the voluntary guidelines, because the final outage report, filed by US West 30 days after the incident, indicated that the outage lasted less than 16 minutes. The FAA outage summary for that date, however, received by the FCC several months later, listed the outage as lasting 1 hour and 57 minutes and affecting the Seattle Air Route Traffic Control Center (ARTCC).

## CAUSE:

A defective regenerator in the power bay of a fiber system.

## 2. May 12, 1993

## INCIDENT:

A significant major-airport-affecting outage occurred on AT&T facilities that affected 5 ARTCCs serving the Midwest and Rocky Mountain states. The outage lasted nearly 24 hours, causing flight delays and rerouting at Kansas City Airport. Communications delays were also experienced at Stapleton International Airport in Denver, Colorado, though these were less severe.

## CAUSE:

The FAA reports that AT&T had been in the process of improving its FAA-contracted system. Improvements had already been made at the five affected ARTCC locations. The FAA's investigation found that the outage was related to the AT&T improvements, although the root cause has not been determined with any certainty. The FAA states that, due to a concern about the potential for similar problems at other improved locations, it has had several follow-up meetings and planning sessions with AT&T to arrange for the use of new "firmware." This "firmware" consists of message or management traffic software designed to prevent overloading the network with management messages. The FAA has asked AT&T to put this in operation at the five improved facilities. The FAA/AT&T discussions also provided for further testing before implementation and for staged implementation to contain the effects of additional "bugs" that might be discovered after implementation.

## 3. August 31, 1993:

## INCIDENT:

An ALLTEL outage occurred lasting 1 hour and 38 minutes and affecting the ARTCC in Hilliard, Florida. According to the FAA, the ARTCC was completely

out of communication with all air and ground facilities. Traffic was reassigned to neighboring ARTCC's where there were overlapping areas, although there was a period of a few minutes when air space solely within range of the affected ARTCC still contained some isolated air traffic.

**CAUSE:**

The outage was caused by a defective switch card in the fiber optic equipment manufactured by Nippon Electric that resulted in a burnt element. Nippon Electric was not able to discern the reason for the defect, but has established certain testing routines to prevent recurrence of the problem in the future. ALLTEL has previously suggested the installation of duplicate equipment in order to increase the reliability of these fiber optic facilities. According to ALLTEL, the FAA has not voted on this suggestion.

Nuclear Power Plants

The Commission's reporting rules currently do not require carriers to report to the Commission outages to nuclear power plants. In a Notice of Proposed Rulemaking released December 1, 1993, the Commission proposed to require the National Communications System (NCS) to report mission-affecting outages that last 30 minutes or longer to the Commission. Since October, 1992, these outages have been reported to the NCS. Nonetheless, some carriers have furnished reports of such outages to the FCC on a voluntary basis, both prior to and subsequent to October, 1992. The FCC has received the following reports directly from carriers:

1. INCIDENT: July 13, 1992.  
Lightning caused an outage at the Cooper Nuclear Power Plant in Auburn, Nebraska.
2. INCIDENT: August 7, 1992.  
An outage affected the LaSalle Nuclear Generating Station in Seneca, Illinois, when a cable was severed by a contractor.
3. INCIDENT: February 11, 1993.  
An outage caused by a cable dig-up affected the Wolf Creek Nuclear Facility in Burlington, Kansas.
4. INCIDENT: March 21, 1993.  
The New England Telephone company experienced an outage that affected the Seabrook Nuclear Power Plant in New Hampshire. It was caused by improper documentation for software from Northern Telecom.
5. INCIDENT: March 30, 1993.  
Lightning caused an outage at the Grand Island Atomic Power Plant in Nebraska.

6. INCIDENT: April 27, 1993.  
A contractor caused a cable cut that resulted in an outage for the Wolf Creek Nuclear Facility in Burlington, Kansas.
7. INCIDENT: July 23, 1993.  
A lightning storm caused an outage to the Cooper Nuclear Power Plant in Nebraska.

**Question 10.** With respect to Local Multipoint Distribution Service, can municipalities who are interested in providing noncommercial educational programming be assured that they will have access to a license, even if more than one applicant exists?

**Answer.** The establishment of the Local Multipoint Distribution Service (LMDS) is under consideration in a rulemaking proceeding in CC Docket No. 92-297. There has been no resolution of the fundamental issues raised in that proceeding.

The first issue the Commission faces in establishing the LMDS service is to resolve how the spectrum in the 27.5 - 29.5 GHz ("28 GHz") frequency band will be shared or apportioned between LMDS and satellite users. To that end, the Commission will establish a Negotiated Rulemaking Committee pursuant to the Federal Advisory Committee Act and the Negotiated Rulemaking Act. The Committee will consider to what extent terrestrial and satellite uses can share the 28 GHz band on a co-frequency basis and it will recommend technical rules to effectuate this sharing. If full sharing between the two services is not technologically feasible, the Commission will then decide what portion, if any, of the 28 GHz band each type of non-shared service will have. There are several educational and non-commercial interests represented on this advisory committee.

The next category of issues the Commission will address, in establishing LMDS, is how to license the spectrum for this terrestrial use. One of the issues raised in the Notice of Proposed Rulemaking is whether there should be a set-aside of spectrum for the use of non-commercial and/or educational entities. In the Notice of Proposed Rulemaking, the Commission did not propose to set aside any spectrum for educational or non-commercial use, but asked for comments on the subject. The Commission has received many comments offering arguments on both sides of this issue.

Finally, the Commission will consider whether LMDS spectrum will be auctioned. In the Notice of Proposed Rulemaking, issued before Congress authorized the Commission to use auctions for mutually exclusive applications, the Commission proposed to use the auction procedure should it become available. If the Commission ultimately decides that the auction statute applies to LMDS applicants, the auction statute contains safeguards for fair access to licenses by applicants without deep pockets.

The Commission's final rules will be issued after all interested parties have had a chance to respond to the issues in the proceeding, including auction authority and the set-aside of spectrum for educational or non-commercial licensees.

**Question 11.** With respect to imposition of application fees under Section 8 of the Communications Act, does the Commission have the authority to adjust the schedule of application fees for applications that may require fewer resources than other applications that typically fall under a particular category in the schedule?

**Answer:** The Commission has no authority to revise or adjust the enacted Section 8 application fees for changes in processing costs. The Commission's authority is limited to adjusting the fees on a pro-rata basis every two years based upon changes to the Consumer Price Index.

**Question 12.** With respect to section 9 fees, some persons have raised the concern that the fee for recreational boaters, approximately \$35, will discourage average recreational boaters from buying and installing radios. Do you think this concern has merit? If so, are there steps the Commission can take to ameliorate these concerns?

**Answer.** We are not in a position to evaluate whether the fees assessed against recreational boaters for their marine radios will discourage the purchasing of such radios. What is clear is that many recreational boaters have objected to the fee.

Notably, the section 9 regulatory fee for marine ship radio station licensees is \$7.00 per year, a rather modest amount given overall costs of operating a recreational vessel. The Commission requires that the annual fee be paid up-front for the entire 10 year license term. Thus, ship radio station applicants will pay \$115 (\$45 application fee and \$70 regulatory fee) at the time of application for a new or renewal license. This method minimizes collection costs as the annual collection of these fees would exceed the revenue collected. The Commission will refund unused portions of license fees when a licensee sells a vessel or otherwise forfeits a license. Additionally, only those boaters who need to renew a license or who are applying for a new license will be required to pay a regulatory fee.

We have reviewed the overall licensing process for recreational boaters and aviators in terms of the burdens to both the public and the government, and the benefits that accrue. As a result of this review, we have recommended to the Committee that the Communications Act be amended to allow the Commission to authorize these operations by rule. This was a successful effort in the Citizen's Band Radio Service some years ago. (See 47 U.S.C. Section 307(e)(1)). Aircraft identify by using the FAA registration number (tail number) and boats generally identify by the boat name, so neither needs an FCC assigned call sign. In addition, modern technology limits operators to only those frequencies available to the

particular radio service. The value of licensing either service becomes marginal. Elimination of the licensing requirement would save thousands of burden hours each year for the public and for the government. Notably, the resources that are generated under section 9 from these sources, approximately \$9 million for fiscal year 1995 will have to be found elsewhere.

**Question 13. Is it the Commission's policy with regard to unlicensed Part 15 frequencies that users elect to operate in these bands at their own risk, and that these bands may be reallocated to incompatible licensed services at any time?**

a) If no, then why, after manufacturers, core industries and consumers have spent hundreds of millions of dollars on the development and installation of unlicensed devices in the 902-928 MHz band, is the Commission proposing to abandon the Part 15 community in favor of a new automatic vehicle locator (AVL) service that will likely duplicate existing services, including the global positioning satellite service that was developed at taxpayer expense?

b) If yes, please provide the Subcommittee with the public policy rationale behind such a policy. In particular, please explain how such a policy does not effectively mass market consumer goods after they have already been made available and accepted on the market.

Historically, we have not allocated spectrum specifically for unlicensed Part 15 equipment. Instead, Part 15 equipment has been allowed to operate in spectrum that is shared with licensed radio services, so long as it did not cause interference to those services and accepted interference from such services. See 47 CFR Section 15.5. The rules indicate that "Persons operating intentional or unintentional [unlicensed] radiators shall not be deemed to have any vested or recognizable right to continued use of any given frequency." These long-standing policies have worked successfully for several decades, permitting Part 15 devices to co-exist with licensed communications systems. Notably, the Commission always considers the potential impact on all users of a band, including Part 15 users, before adopting changes that might affect those users.

The 902-928 MHz band is shared by a variety of different uses: industrial, scientific, and medical equipment; federal government; automatic vehicle monitoring (AVM); amateur radio operators; and Part 15 devices. In the 902-928 MHz band, we have had rules in place for operation of automatic vehicle monitoring (AVM) equipment for over 20 years. Equipment used in this band is now gaining popularity as part of the Intelligent Vehicle Highway System (IVHS). Not only will the equipment track vehicles, which can lead to increased safety of occupants, it can also perform numerous other functions. For example, AVM equipment can eliminate the need for vehicles to stop at toll booths, as the equipment will be able to identify vehicles and bill charge accounts for the tolls. AVM can alert drivers of traffic congestion and even display on-board maps of

routes around tie-ups. This band is also used extensively by railroads and shipping companies as a means to track containers. These services, and others, can save the American people thousands of hours in lost commuting time and millions of barrels of oil. The services also contribute to improved efficiency of businesses and growth of the economy. These benefits are certainly in the public interest. Although some of these services could be provided in other bands, much work has already gone into this band. In fact, multi-national standards now exist for protocols used in container tracking.

Automatic Vehicle Monitoring systems operate on a licensed basis. Because of the great potential for AVM systems to serve the public, the Commission believes it important to examine changes to the 1970 rules. Those changes are the proposals now before the Commission in the proceeding related to AVM systems, PR Docket No. 93-61. Under the existing proposal, Part 15 equipment could continue to operate in the band under the same conditions that it has always had regarding causing and accepting interference. We understand that some of the planned AVM systems, primarily those that would be used to track vehicles, rely on weak signals that are easily interfered with. Part 15 manufacturers are therefore concerned that their devices may cause interference to these AVM systems and that, because of the Part 15 non-interference requirements, their products will be unable to operate in the 902-928 MHz band. It should be noted that the AVM systems that have problems sharing spectrum with Part 15 devices also have problems sharing spectrum with other AVM systems.

The Commission has the responsibility for ensuring that the use of the spectrum best serves the public interest which often requires striking a balance among competing uses of the spectrum. That process inevitably leads to the delineation of priorities. The Commission must evaluate not simply tangible results, but also the potential benefit a particular use presents. Determining the most beneficial use to the public this requires the merging of technical, economic and legal disciplines and, as you note, is as difficult as it is complex. The ongoing review of the 902-928 MHz band, symbolizes the Commission's endeavor not simply to accept the status quo, but to determine the most optimal uses serving the public interest. The issues that have emerged, many of which are enumerated below, are not yet resolved.

We believe that acceptable sharing standards can be developed and we will continue to work with all affected industries to that end. A copy of a response to correspondence from Congressman Tauzin, Congressman Moorhead, Congressman Gillmor, Congressman Bliley, Congresswoman Margolies-Mezvinsky and Congressman Manton addressing this issue is enclosed.



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 13, 1994

The Honorable Thomas J. Bliley, Jr.  
U.S. House of Representatives  
2241 Rayburn House Office Building  
Washington, DC 20515-4607

Dear Congressman Bliley:

Thank you for your letter regarding radio frequency devices that operate under Part 15 of the Commission's rules and our related proceeding dealing with automatic vehicle monitoring systems (PR Docket No. 93-61).

Part 15 of the Commission's rules provides for unlicensed operation of low power radio transmitters. Historically, the Commission has not allocated spectrum specifically for unlicensed Part 15 equipment. Instead, Part 15 equipment has been allowed to operate on a non-interference basis in spectrum that is shared with licensed radio services. For example, Part 15 devices must share the 902-928 MHz band, in which you have expressed interest, with a variety of different users: industrial, scientific, and medical equipment; federal government users; automatic vehicle monitoring (AVM) systems; and amateur radio operators. Section 15.5 of our rules indicates that Part 15 devices: 1) have no vested right to the continued use of any frequency; 2) must cease operation if they cause harmful interference to licensed services; and 3) must accept any interference that is received.

The Commission has the responsibility for ensuring that the use of the spectrum best serves the public interest which often requires striking a balance among competing uses of the spectrum. That process inevitably leads to the delineation of priorities. The Commission must evaluate not simply tangible results, but also the potential benefit a particular use presents. Determining the most beneficial use to the public requires the merging of technical, economic and legal disciplines and, as you note, this is as difficult as it is complex. The ongoing review of the 902-928 MHz band symbolizes the Commission's endeavor not simply to accept the status quo, but to determine the most optimal uses serving the public interest. The issues that have emerged, many of which are enumerated below, are not yet resolved.

**Question 1. Has the Commission's long standing goal to encourage and facilitate the commercial development of advanced radio technology, and particularly, the development and manufacture of unlicensed Part 15 devices, been successful?**

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**Answer:** We believe the Commission's actions to encourage the development and manufacture of unlicensed Part 15 devices have been a success. A range of new radio products have become available to the public and businesses, reflecting economic development and the creation of new jobs. Part 15 products operate in numerous frequency bands throughout the radio spectrum and are used for a wide variety of consumer and business applications. In the 902-928 MHz band alone, we have authorized more than 20 different types of products for operation in this spectrum to more than 130 different manufacturers. We currently receive about 20 applications a month for approval of products in this spectrum, and continually see new kinds of products.

**Question 2. Please identify the products that have been developed under the current Part 15 rules.**

**Answer:** Part 15 devices include cordless telephones, wireless home security alarm systems, garage door opener systems, and radio control toys. Businesses use Part 15 products such as anti-pilferage systems, wireless radio local area networks, utility meter reading and load management systems, automatic door openers, and office PBX systems. Products that operate in the 902-928 MHz band include the following: home and business cordless telephones; residential and commercial security systems, including smoke detectors, fire alarms, and video surveillance systems; home arrest systems; tag identification systems for secure building access; wireless microphones; automatic vehicle identification systems; anti-shoplifting systems; computer local area networks; biomedical monitoring systems and medical data links; automatic utility meter reading systems; utility pipeline management systems; traffic light remote controls; bar-code scanners for inventory control; wireless check-out registers for retail establishments; and devices for wireless connection of electronic musical instruments.

**Question 3. Please provide data on the amount of capital invested in the research, development and marketing of these products and the number of these products that have been purchased by consumers.**

**Answer:** Manufacturers are not required to report information to the Commission on their capital investment or the number of products they have sold. In comments filed in our proceeding on automatic vehicle monitoring, PR Docket No. 93-61, a coalition of thirty manufacturers estimates that the overall investment in development of Part 15 devices for the 902-928 MHz band is approximately \$2 billion. The comments filed in PR Docket No. 93-61 also indicate that there are at least 6 million Part 15 devices operating in the 902-928 MHz band.

**Question 4. Is the Commission aware of load management and meter reading systems employing Part 15 unlicensed devices?**

**Answer:** Yes, as noted above.

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**Question 5.** Please describe the Commission's pending proposal to amend Part 90 of the Commission's Rule in order to adopt regulations for automatic vehicle monitoring (AVM) in PR Docket No. 93-61, RM-8013, and how it may affect the ability of Part 15 devices to continue to operate in the 902-928 MHz band.

**Answer:** In PR Docket No. 93-61, the Commission has proposed certain changes to rules pertaining to AVM systems operating in the 902-928 MHz frequency band. See Notice of Proposed Rule Making, PR Docket No. 93-61, 8 FCC Rcd 2502 (1993). The current interim rules governing operation of AVM systems in this band have been in place for about 20 years. AVM systems using this band are becoming the focus of increased investment opportunities. Some AVM systems will support the Intelligent Vehicle Highway System (IVHS). AVM systems can be used to track vehicles, collect tolls without requiring the vehicle to stop at a toll booth, alert drivers to traffic congestion, and display maps of routes around traffic tie-ups. Advocates assert substantial economic and safety benefits will accrue as these services reduce commuter travel time and highway congestion, and decrease energy consumption and pollution.

In our Notice, we proposed to adopt permanent rules that would expand the licensing of AVM systems from the 904-912 and 918-926 MHz sub-bands to the entire 902-928 MHz band. We also proposed to expand the eligible users and uses of AVM systems. Potential users would include individuals and the Federal Government, in addition to the existing business and local government users. We proposed that AVM systems be permitted to transmit information regarding the location of any object, animate or inanimate, and to rename the service to Location and Monitoring Service (LMS). Finally, we proposed to allow AVM services to be provided on a private carrier, for-profit basis instead of the current cost-sharing basis. We did not propose to change the Part 15 rules in any way.

**Question 6.** Pursuant to the current proposal in PR Docket No. 93-61 and Commission Rules governing priority users in a band, under what circumstances could unlicensed Part 15 devices be forced to cease operations, particularly in terms of interference?

**Answer:** As mentioned previously, the 902-928 MHz frequency band is shared by various user groups. In order to effectively manage the shared use of this spectrum, priorities for access to this band have been established among these groups. Users with lower priority generally must accept interference from and may not cause interference to users that have a higher priority. The 902-928 MHz band is primarily allocated for use by the Federal Government for Radiolocation, Fixed and Mobile services; these Federal Government users, must, however, accept interference from Industrial, Scientific and Medical (ISM) devices. Following both the Federal Government and ISM devices on the priority scale are AVM systems. Next are Amateur radio operators and finally, Part 15 users that are eligible to operate in this band. Because they have the lowest priority, Part 15 users are not permitted to cause interference to any of the other users in this band. Section

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15.5 of our rules indicates that "The operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected." The priorities for use of the 902-928 MHz band constitute no change from existing rules.

**Question 7. Please provide data on the character and probability of interference by Part 15 devices to the proposed AVM system and vice versa.**

**Answer:** Commenters argue that some of the planned AVM systems, primarily those that would be used to track vehicles with wide-band, pulse-ranging ("multilateration") technology, rely on weak signals that are rather easily interfered with. Many of the commenters in PR Docket No. 93-61 indicate that interference to multilateration AVM systems from Part 15 devices, as well as from other AVM systems, is likely. The commenters also indicate that interference from multilateration AVM systems to Part 15 devices, and interference between non-multilateration AVM systems and Part 15 devices, is substantially less likely.

MobileVision, a proponent of multilateration AVM systems, filed an analysis of potential interference between Part 15 devices and multilateration AVM systems. That study indicates that outdoor Part 15 devices located within 3.6 miles of a multilateration AVM receive site are likely to cause "very significant interference".

In the record, Part 15 manufacturers express concern that, because of the Part 15 non-interference requirements, their products will be unable to continue to operate in the 902-928 MHz band.

**Question 8. Please characterize the number and types of proponents and opponents to the proposal in PR Docket No. 93-61. Do a majority of manufacturers of products using this area of the spectrum oppose this proposal? Is there agreement amongst the AVM systems themselves in support of this proposal?**

**Answer:** We received 84 initial comments and reply comments, followed by additional further comments and reply comments, as well as numerous ex parte filings. Commenters included AVM service providers, AVM licensees that use AVM systems to meet their own internal needs, AVM users, manufacturers and users of Part 15 equipment, and amateur operators.

AVM commenters generally favor our proposals and argue that it is critical that the Commission adopt permanent rules and end the regulatory uncertainty regarding this band. They suggest that the lack of permanent rules is keeping AVM service providers and manufacturers from committing greater capital or from obtaining the financing that is needed for full development and implementation of AVM systems. There is some disagreement among AVM commenters regarding compatibility and

The Honorable Thomas J. Bliley, Jr.

5.

interference potential between multilateration AVM systems, non-multilateration AVM systems, and Part 15 devices. These differing positions involve issues such as whether multilateration AVM systems should be kept apart from non-multilateration AVM systems, whether multiple multilateration systems can coexist in the same sub-band, and, if so, whether the number of multilateration AVM systems in one sub-band should be limited.

Manufacturers and users of Part 15 equipment and Amateur operators uniformly oppose the proposal to expand use of AVM systems in the 902-928 MHz band. These commenters contend that the proposed expansion of AVM systems in this band will lead to severe spectrum congestion that will force operators of Part 15 equipment and Amateur operators to discontinue use of the band because of interference both to and from AVM operations. They generally recommended either discontinuing AVM use in the band completely or providing additional protection for their operations.

We are now in the process of deciding what our next steps should be in this proceeding. Commission staff is looking carefully at all of the issues raised in this proceeding and is reviewing a number of options. The Commission will endeavor to make a decision in this proceeding that brings the greatest benefit to the American public. Please let me know if you would like additional information on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reed E. Hundt', with a stylized flourish at the end.

Reed E. Hundt  
Chairman



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 13, 1994

The Honorable Michael G. Oxley  
U.S. House of Representatives  
2233 Rayburn House Office Building  
Washington, D.C. 20510

Dear Congressman Oxley:

Enclosed are responses to the questions you submitted with regard to the authorization hearing of the Federal Communications Commission. Please call upon me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed E. Hundt", written in a cursive style.

Reed E. Hundt  
Chairman

cc: The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications and Finance  
Committee on Energy and Commerce

## QUESTIONS FROM CONGRESSMAN OXLEY

Q.1. Like a lot of Americans, I am getting confused about where long-distance telephone prices are really heading.

For several years, AT&T, MCI, and other long-distance companies have said that toll prices had fallen "40 percent" since the Bell System breakup in 1984. Recently, that 40 percent has gotten ever higher -- some of the ads that have been running have claimed reductions of 60 percent or more.

In the responses which you provided the House Appropriations Subcommittee earlier this month, however, you stated, "During the last ten years, interstate long-distance rates have decreased by more than 25%."

And, in your speech before the Harvard International Business Club on May 11, you stated, "Since AT&T lost its monopoly ... ten years ago ... [r]ates for long distance calls have dropped by two-thirds."

Then on May 12, the FCC released its semi-annual "Telephone Trends" report. If I am reading Table 5 of that report correctly, it shows that prices for long-distance calls regulated by the FCC did go down, by about 39 percent -- but only until last year. Since then, it also looks like long-distance prices have risen 16.1 percent, which is four times or more than the rate of inflation over the past two years.

Now, if my math is correct, doesn't your own agency report indicate that the biggest decline has only been about 22.9 percent over ten years. 2.3% per year doesn't strike me as a really big price reduction. And, of course, we have these increases coming along.

So, Mr. Chairman, my first question for you and the other Commissioners would be this: What is it? 40, 60, 66, or 22.9% Exactly how much have long-distance prices really fallen since the Bell System breakup in 1984? And, how long do you expect we will continue to see these large price increases we have been seeing for the past two years?

Answer: You are correct that various figures have been used, at different times when discussing the level of price decreases for long distance services during the last 10 years. There is general agreement that long distance prices have fallen considerably since divestiture of the Bell Operating Companies by AT&T in 1984. The disagreements about the precise magnitude of this decrease reflect disputes about the data that should be used to calculate the price reductions. For example, the calculation of the rate decrease is affected significantly by the characteristics of the calls if the computation is based on a sample of calls. Thus, the price of a

basic residential five minute direct-dialed call carried by AT&T during the daytime between points located 3000 miles apart (for example, from Washington, D.C. to Portland, Oregon) declined by 50% between January 1984 and April 1994. The price decreases for other calls of different lengths placed at different times of the day over this period vary from this percentage. Calculation of the overall rate decrease during this 10 year period is also affected by the treatment of inflation.

In May, 1994, the Staff of the Federal-State Joint Board in CC Docket No. 80-286 published a Monitoring Report containing data on various aspects of the telecommunications industry. This report is published annually and includes information on telephone service rates published by the Bureau of Labor Statistics (BLS), such as the Consumer Price Index for Interstate Toll Service. The Interstate Toll Service Index is computed on the basis of direct dialed calls, calls using operator services (beginning in 1987-88), and to a very limited extent, discount and promotional plans. For the ten year period from March, 1984, to March, 1994, this Index indicates an overall decline of approximately 26% (see Attachment 1, Table 5.5) in interstate long distance rates.

The BLS Interstate Toll Service Index has been criticized on the grounds that it understates the actual decline in long distance rates paid by consumers. Critics contend that the BLS index does not adequately reflect the impact of discount and promotional plans, is based upon outdated pricing samples, and does not properly account for consumer usage of AT&T's competitors. For instance, if one compared 1984 and 1994 rates for basic, direct-dialed long distance service, the rate decrease would be less than if one included the effects of the growing array of discount plans that AT&T and its competitors offer (e.g., the MCI "Friends and Family" offering).

You refer in your question to price increases that AT&T and other interstate carriers have filed during the past two years. AT&T filed increases in its basic direct-dialed interstate rates in 1992 and 1993 that coincided with its offering of promotional service offerings and discount plans for residential customers, including those with relatively low monthly long distance bills. The percentage rate increases attributed to AT&T usually do not take these discount offerings into account. Moreover, the Common Carrier Bureau's review of AT&T's rate changes found that the increases were within the limits set by the price cap rules. In furthering our mandate to ensure just and reasonable rates, however, we will continue to monitor long distance rates and consider any necessary and appropriate action if an overall trend toward higher rates emerges.

TABLE 5.5  
Consumer Price Index Data

	All Items	All Telephone Services	Local Services	Interstate Toll Service	Intrastate Toll Service
1983 January	97.8	96.1	97.2	100.9	97.3
February	97.9	96.3	98.0	101.0	98.9
March	97.9	96.5	97.0	101.6	99.3
April	98.6	96.4	98.5	101.6	98.5
May	99.2	96.9	97.5	101.6	100.0
June	98.5	96.3	98.1	101.6	100.2
July	99.8	99.5	98.1	101.7	100.9
August	100.2	99.8	98.3	101.7	101.0
September	100.7	99.9	98.6	101.7	101.2
October	101.0	98.7	98.3	101.4	101.6
November	101.2	100.4	98.5	101.4	102.3
December	101.3	98.8	98.3	101.3	102.2
1984 January	101.9	106.0	106.7	101.3	104.3
February	102.4	107.0	110.0	102.1	104.2
March	102.6	108.4	108.1	102.1	104.1
April	103.1	108.7	108.1	102.0	106.6
May	103.4	108.9	108.8	102.3	106.1
June	103.7	107.1	110.7	98.9	106.8
July	104.1	107.7	112.3	98.9	107.8
August	104.8	107.9	112.9	98.8	106.6
September	105.0	108.7	114.3	98.6	106.8
October	105.3	109.8	114.5	97.0	108.5
November	105.3	109.4	116.4	98.9	107.1
December	105.3	109.0	115.2	98.9	106.9
1985 January	105.5	109.3	115.6	98.9	108.6
February	106.0	108.3	113.6	98.9	106.6
March	106.4	109.5	116.0	98.9	106.1
April	106.9	109.4	115.8	98.9	106.0
May	107.3	109.6	116.0	97.4	105.6
June	107.6	112.1	121.3	94.7	106.2
July	107.6	112.9	123.0	93.1	107.5
August	108.0	113.8	123.9	93.3	107.8
September	108.3	113.7	124.2	93.3	107.9
October	108.7	113.8	124.3	93.3	108.0
November	109.0	114.2	126.2	93.3	107.9
December	109.3	114.1	125.5	93.3	108.5
1986 January	109.6	114.6	126.3	93.3	108.7
February	109.3	114.8	126.4	93.3	107.0
March	109.8	115.3	127.2	93.3	107.1
April	109.6	116.5	129.5	93.3	106.6
May	109.9	116.5	129.5	93.3	106.9
June	109.5	116.7	136.6	88.0	106.7
July	109.5	116.7	137.0	84.7	106.7
August	109.7	116.6	137.2	84.4	107.0
September	110.2	118.3	136.5	84.4	108.5
October	110.3	118.9	137.5	84.4	108.8
November	110.4	117.8	136.1	84.4	108.5
December	110.5	117.2	134.4	84.5	108.6
1987 January	111.2	116.6	137.6	77.1	107.0
February	111.6	116.4	137.5	77.1	106.4
March	112.1	116.4	137.4	77.1	106.4
April	112.7	116.7	136.2	77.0	106.3
May	113.1	116.4	136.1	76.7	106.2
June	113.5	115.8	137.5	76.7	106.7
July	113.8	116.6	141.0	73.4	104.0
August	114.4	117.0	141.9	73.4	103.8
September	115.0	116.8	140.9	73.7	103.5
October	115.3	117.0	141.3	73.7	104.1
November	115.4	116.9	141.4	73.7	103.6
December	115.4	115.7	138.9	74.0	103.6

TABLE 5.5  
Consumer Price Index Data

	All Items	All Telephone Services	Local Services	Intrastate Toll Service	Intrastate Toll Service
1988 January	115.7	115.8	138.8	72.2	104.1
February	116.0	116.8	141.6	72.2	103.8
March	116.5	116.2	141.1	72.0	103.2
April	117.1	116.6	142.0	72.1	102.9
May	117.5	116.6	142.0	72.1	102.8
June	118.0	116.8	140.8	72.1	102.3
July	118.5	115.8	141.4	72.1	100.3
August	119.0	114.8	138.4	72.1	100.3
September	119.8	115.8	140.8	73.1	100.0
October	120.2	115.8	141.1	73.1	99.4
November	120.3	115.7	140.8	73.1	99.4
December	120.5	117.2	145.2	70.8	99.2
1989 January	121.1	116.8	145.0	70.8	97.4
February	121.8	116.8	144.7	70.8	97.4
March	122.3	116.2	144.1	70.8	98.9
April	123.1	117.2	146.8	70.0	98.8
May	123.8	117.8	147.8	69.8	97.4
June	124.1	117.6	147.2	69.8	97.4
July	124.4	117.8	147.8	69.8	97.0
August	124.6	117.7	147.8	69.8	97.0
September	125.0	117.8	147.8	69.8	96.8
October	125.8	116.9	148.2	69.8	96.7
November	125.8	117.2	148.8	69.8	96.8
December	128.1	116.8	148.0	70.0	96.8
1990 January	127.4	117.8	148.4	68.1	94.2
February	128.0	117.8	149.0	68.0	95.1
March	128.4	118.2	148.7	68.0	95.0
April	128.8	118.4	150.0	68.0	95.1
May	129.2	118.0	149.2	68.0	95.2
June	129.8	118.0	149.2	68.0	95.3
July	130.4	115.8	148.4	67.4	95.4
August	130.8	117.7	148.7	67.4	95.3
September	132.7	117.8	150.1	67.4	95.2
October	133.8	118.6	151.4	67.4	94.6
November	133.8	118.6	151.4	67.4	94.7
December	133.8	118.4	147.5	67.4	94.5
1991 January	134.8	119.3	153.4	67.1	93.4
February	134.8	119.2	153.2	67.1	93.4
March	135.0	119.3	153.2	67.5	93.3
April	135.2	119.3	153.4	67.5	92.9
May	135.6	119.3	153.6	67.5	92.6
June	136.0	118.8	153.6	67.5	93.1
July	136.2	119.8	153.8	67.5	93.2
August	136.8	118.7	154.1	67.5	93.2
September	137.2	118.9	154.2	68.0	93.1
October	137.4	120.0	154.8	68.0	92.9
November	137.8	120.4	155.0	68.2	93.3
December	137.8	120.5	155.0	68.3	93.1
1992 January	138.1	120.8	155.8	68.6	92.5
February	138.6	120.6	156.8	68.6	92.2
March	139.3	120.9	156.2	68.6	91.8
April	139.5	120.8	156.2	68.8	91.4
May	139.7	120.8	156.2	68.6	91.4
June	140.2	119.8	154.7	68.2	91.2
July	140.5	120.3	155.7	67.5	91.4
August	140.9	120.1	155.4	67.8	91.2
September	141.3	120.0	155.3	67.4	91.1
October	141.8	120.0	155.4	67.4	91.0
November	142.0	120.0	155.4	67.4	90.9
December	141.9	120.1	155.7	67.4	90.8

TABLE 5.5  
Consumer Price Index Data

	All Items	All Telephone Services	Local Services	Interstate Toll Service	Intrastate Toll Service
1983 January	142.8	120.7	156.4	68.3	90.6
February	143.1	120.7	156.3	68.3	90.6
March	143.6	120.8	156.3	68.0	90.7
April	144.0	120.3	155.3	68.0	90.5
May	144.2	120.8	156.3	68.0	90.6
June	144.4	120.7	156.0	68.0	90.3
July	144.4	121.0	156.2	69.3	90.7
August	144.8	121.2	156.3	70.1	90.7
September	145.1	121.6	156.7	70.3	90.8
October	145.7	121.8	156.8	70.8	91.0
November	145.8	121.8	157.0	70.8	91.0
December	145.8	122.3	157.2	71.8	91.1
1984 January	146.2	122.0	156.8	71.8	90.5
February	146.7	123.3	156.9	75.6	90.5
March	147.2	123.2	156.8	75.6	90.2
April	147.4	123.0	156.8	75.3	90.0
May					
June					
July					
August					
September					
October					
November					
December					
1985 January					
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1986 January					
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1987 January					
February					
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December					

**Q.2. My second question, Mr. Chairman, would be this: What other factors besides long distance competition, and specifically, what FCC regulatory actions might explain these price reductions? FCC Commissioners should include in their answer:**

- (a) deregulated terminal equipment and "detriffed" inside wiring -- thus substantially reducing phone companies' rate bases;
- (b) instituted "Subscriber Line Charges";
- (c) lowered the allowable rate of return for phone companies from 12.5 to 11.25 percent; and
- (d) instituted price caps on local telephone companies (adopted in 1980) which have caused local access charges paid by long distance carriers to fall by billions of dollars.

**Q.3. Finally, could you please quantify and submit for the record, first, what you believe the actual price reductions based on long distance competition have been? And, second, how much of that reduction would you attribute to regulatory actions as distinguished from marketplace competition?**

The Commission's decisions that deregulated terminal equipment and detriffed inside wiring were implemented for the most part prior to 1984. Consequently, although these actions did reduce interstate rates, they do not directly affect the decreases in long distance rates for the period from 1984 to 1994.

In January, 1984, the FCC instituted a major change in its rules regarding the manner in which interstate loop costs are recovered. This change did affect the rates that long distance users are charged. The Commission, adopting a recommendation of a Federal-State Joint Board, implemented the flat-rate Subscriber Line Charge (SLC), which is collected from end users (currently a maximum of \$3.50 per month for residential and \$6.00 per month for businesses) to recover costs that were previously recovered from interexchange carriers on a per-minute basis. The FCC directed AT&T to reduce its long distance rates by corresponding amounts while this change was being phased in, from 1984 through 1989.

Rates also decreased to some extent during this period due to changes in the prescribed interstate rate of return. In 1984, the authorized interstate rate of return for AT&T and the LECs was 12.75%. This was reduced to 12% in 1986 and to 11.25% for the LECs in 1991. These reductions in the allowable rate of return reflected declines in the carriers' cost of capital and were passed through to their customers in the form of lower access charges and long distance toll charges.

Concurrently with the 1991 reduction in the prescribed rate of return, the FCC also implemented price cap regulation for the Bell Operating Companies. The price caps regulatory scheme is structured to produce lower rates and more efficient service

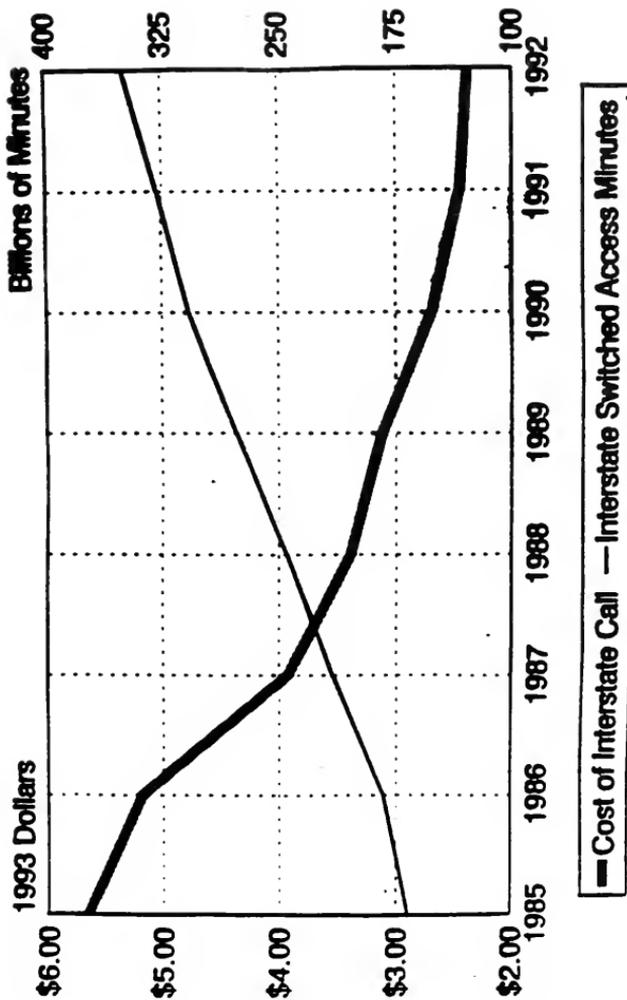
for consumers than rate of return regulation. Under price caps, LEC interstate access rates fell by about 9.7%, despite overall inflation of roughly 14.4% during this time period.

The Commission has found that the rate reductions implemented by the LECs and long distance carriers since 1984 have a direct, positive effect on consumers' use of the telephone network. Historic data demonstrate that as long distance rates have declined, network usage has substantially increased. See Attachment 2. Such increased calling volumes, in turn, enable interexchange carriers to realize even greater network efficiencies and decreased per-unit costs, thereby fostering further rate reductions for consumers. Thus, while regulatory changes by the FCC are in part responsible for the decline in long distance prices, these actions have had the additional effect of stimulating further rate reductions by fostering intensified competition among long distance carriers, which has led to further increases in demand for long distance services.

Quantifying the relative responsibility of competition and regulatory changes for specific price reductions is necessarily imprecise. This is so because regulatory reform not only leads directly to price reductions, but those reductions, in turn, increase competition, which, fosters further price decreases. For example, while the total amount of the SLC is calculable, this amount does not fully reflect the effect of the implementation of the SLC and the Commission's nondiscriminatory access charge regime on rates, as it does not take into account the demand stimulation and efficiency effects of these regulatory actions. Likewise, one cannot measure the effects of price caps simply by measuring the changes in per-minute charges over time. Capturing those effects would also require one to determine the demand response and associated increase in efficiency driven by the increased usage. In short, FCC regulatory policies promoting competition are inextricably intertwined with Commission regulatory changes that have resulted in rate decreases.

The Commission remains committed to promoting competition for long distance and other services and to ensuring that its regulatory policies and rules foster efficient, high quality, low cost telecommunications service for consumers. In this regard, we continue to monitor the effects of competition and regulation and will refine our policies as necessary to further these public interest objectives.

# Long Distance Prices and Usage



Interstate call rates based on a 10 minute call, Chicago to Atlanta, AT&T day rates

Source: In-House Analysis Division, FCC, 12/89

**QUESTIONS ASKED DURING THE HEARING BY CONGRESSMAN OXLEY****Cable Funding and Staffing**

**Question:** "Could you tell us...how much money has been consumed so far" of the \$11.5 million FY 1993 supplemental appropriation to hire staff to implement the Cable Act of 1992? (see pp. 55-56 of hearing transcript.)

**Answer:** The FY 1993 Supplemental Appropriation for the Federal Communications Commission provided funds to implement the requirements of the Cable Act of 1992, including \$2.1 million in salary funding to begin hiring new cable staff, as well as to prevent anticipated furloughs of all Commission employees during the fourth quarter of FY 1993. However, the funds provided from the FY 1993 Supplemental have not been used to pay salaries for cable employees during FY 1994. The costs to provide salaries for all Commission employees has been provided from FY 1994 appropriated funds.

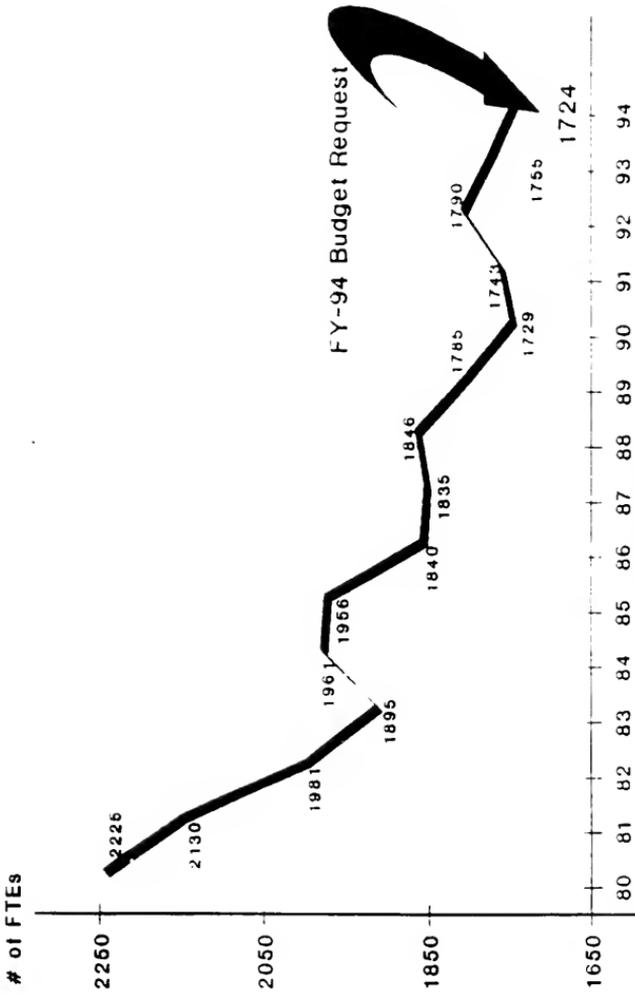
Moreover, \$6.1 million was allocated to provide the necessary ADP equipment and services for the cable program, including personal computers for the staff, software and developmental contract services. An additional \$3.5 million was allocated for the cost of furniture, office equipment and supplies, space rental costs, telephone equipment and services, forms management services, technical equipment used in enforcement activities to monitor compliance with FCC rules and regulations by the cable industry, and to provide for an accounting system to ensure equitable distribution of costs in the development of user fees. These funds were provided under indefinite or "no year" authority and remain available until expended to complete requirements associated with full implementation of the Cable Act of 1992.

**Question:** The chart the Commission provided the Subcommittee on full-time equivalents "does not show the hires under the supplemental [appropriation] dedicated to the Cable Bureau...the [staff] level would be actually higher if we were to include just the 180 that have already been hired. Is that correct?" (see p. 57 of hearing transcript.)

**Answer:** Yes. As Chairman Hundt testified in the hearing, to adjust for cable you would add 240 FTEs to the level in the chart. Thus, the attached Chart A lists a total of 1724 FTEs for FY 1994. If you add the 240 potential cable FTE hires to that number, you get a total of 1964 FTEs in FY 1994 which is reflected in the attached Chart B.

CHART A

# Full Time Equivalents (FTEs) FY 1980 - 1994

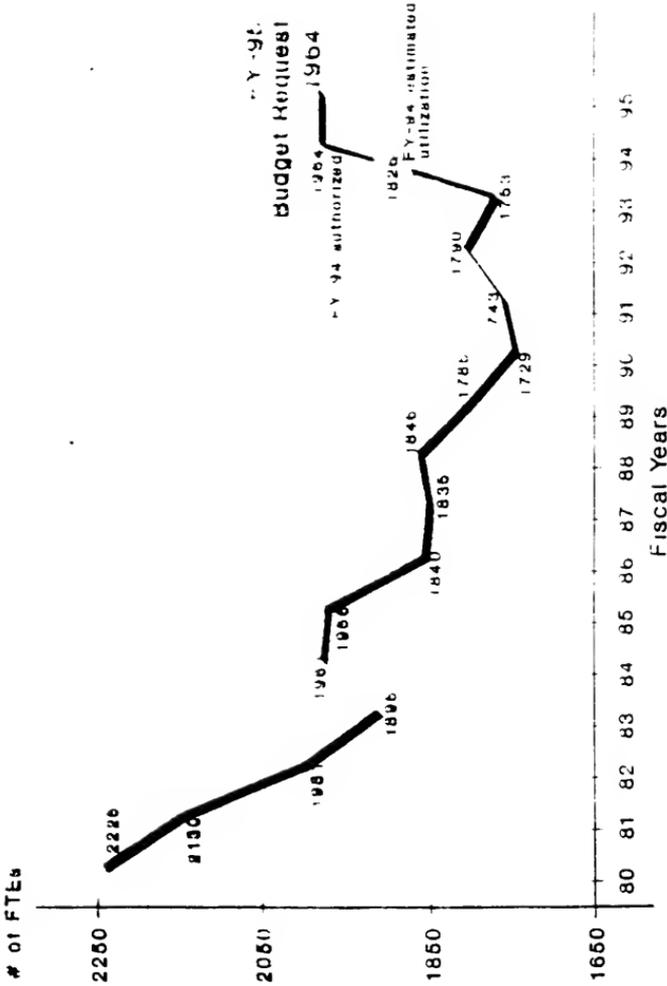


Fiscal Years

Note: FY 81 and FY 82 were actuals; FY 83 through FY 84 were estimates; FY 85 through FY 94 were budget requests. FY 94 includes 20 FTEs for cable support.

CHART B

# Full Time Equivalents (FTEs) FY 1980 - 1995



Fiscal Years

Note: President's FY 1995 Budget reflects an FTE level of 1963 resulting from a technical error by OMB.

OFFICE OF  
THE CHAIRMANFEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 13, 1994

The Honorable J. Dennis Hastert  
U.S. House of Representatives  
2453 Rayburn House Office Building  
Washington, D.C. 20510

Dear Congressman Hastert:

Enclosed are responses to the questions you submitted with regard to the authorization hearing of the Federal Communications Commission. Please call upon me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed E. Hundt", written in a cursive style.

Reed E. Hundt  
Chairman

cc: The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications and Finance  
Committee on Energy and Commerce

## QUESTIONS from Congressman Hastert

Q. Last year, during consideration of the Omnibus Budget Reconciliation Act of 1993, I worked with Chairmen Markey and Dingell to add language to ensure competition would be an essential element of the spectrum auction. Specifically, Section 309(j)(3)(B) makes the promotion of "economic opportunity and competition" an objective of auctions. Indeed, Chairman Dingell in his September 21, 1993, letter to then Interim Chairman Quello was clear that all qualified bidders should be eligible to compete for any part of the spectrum up for bidding.

A. To date in Broadband PCS, it is my understanding that the Commission has excluded from Spectrum Block C all but designated entities. Could each of you explain to me how such an exclusion (or set-aside) promotes competition?

Answer: Section 309(j) of the Communications Act, as enacted by section 6002 of the Omnibus Budget Reconciliation Act of 1993, places upon the Commission the responsibility to balance a number of varied objectives in structuring the competitive award process relating to personal communications services (PCS). The rapid deployment of new technologies, the promotion of economic opportunity and competition, avoiding excessive concentration of licenses, and protecting against unjust enrichment are among the specific objectives the law enumerates. Attracting new competitors by lowering entry barriers is to ensure the meaningful participation of small businesses, rural telephone companies, and businesses owned by minorities and women in providing PCS. The Commission has sought to establish a structure that seeks to carry out each objective in comity with the others.

At its meeting on June 29, 1994, the Commission adopted a "Competitive Opportunity Plan" under which two "entrepreneurs' blocks", consisting of 493 30 MHz and 493 10 MHz Basic Trading Area licenses, are established. Bidding eligibility for these blocks will be limited to afford smaller businesses, including those owned by minorities and women, the ability to participate in the opportunities afforded by PCS. We sincerely believe that this structure is the best means to ensure that entities, historically barred from participating in the telecommunications field, gain an opportunity to do so in a competitive environment.

Throughout the PCS proceedings, the Commission has sought a framework that allows market forces to promote expeditious delivery of services, precludes unjust enrichment and excess concentration, while affording tangible opportunity for participation by small businesses, rural telephone companies, and businesses

owned by minorities and women. We think that structure established provides a highly competitive format that embraces a level of opportunity and participation that will promote access to the range of telecommunications services to the broadest range of Americans.

**B. It is also my understanding that you have limited the bidding eligibility of cellular providers in those areas where they provide cellular service. Could each of you explain to me how such a limitation promotes competition?**

I just want to reiterate my belief that the auction authority extended to the FCC contemplates open eligibility as an integral part of the Commission's statutory mandate to promote competition.

Answer: The Commission has provided substantial opportunity for cellular participation in PCS. In addressing the issue, the Commission has had to balance two competing objectives. The first is to foster the rapid development of PCS. The expertise, economics of scope, and existing infrastructure of cellular providers further this objective. At the same time, the Commission, in its responsibility to broaden competition and avoid excess concentration, must provide an opportunity for new entrants to participate in the provision of PCS. A PCS licensee that has a large stake in a cellular license in the same area has less incentive to compete vigorously against its own interests. Under these circumstances, unfettered participation by cellular providers would thwart the objective of a competitive environment that invites new entrants.

The structure the Commission has established seeks to ensure vigorous competition and maintain opportunity for cellular providers. Most significantly, there are no specific restrictions placed on cellular providers outside of their regions, including those immediately adjacent to their service areas. Moreover, the Commission's reconfiguration of the band in its decision on June 9, 1994, accrues to the benefit of cellular providers as it enhances substantially the compatibility of their equipment and other infrastructure with PCS, thereby lowering costs considerably.

Within a cellular provider's service area, the Commission has balanced the interests of attracting new participants and cellular's ability to deploy technology by allowing entities with a 20 or more percent investment interest in a cellular license to acquire a 10 MHz PCS license in the same area. Additionally, the Commission, in its June 9, 1994 decision, revised a significant aspect of this policy. Specifically, as of January 1, 2000, cellular operators will be subject to the same overall 40 MHz spectrum cap as other PCS operators, and will be able to acquire an additional 5 MHz for a total of 15 MHz of PCS spectrum in the same service areas as their cellular interests.

Additionally, within the parameters of the entrepreneurs blocks, the threshold interest in a cellular provider is raised with regard to those entities eligible to bid in these blocks. Such an entity may have up to a 40 percent interest in a cellular license before its cellular interest will be deemed attributable, and therefore subject to the limitations imposed on cellular providers in their service area. Notably, of the nearly 400 cellular providers, all but approximately 30 qualify to participate in the entrepreneur's blocks, enhancing significantly the ability of cellular providers to share in the opportunities relating to PCS. Overall, the Commission has sought to structure cellular participation so as to reflect the range of purposes and goals the Congress has enumerated in section 309(j).

### FCC Funding

Question 1. The FCC received a supplemental appropriation from Congress last year in the amount of \$11.5 million in order to hire 240 employees to implement the 1992 Cable Act. I understand the FCC has hired under 100 employees for these positions to date. Why has this occurred and what has the FCC done with the money in the mean time?

Answer: There are several factors that have delayed completing the staffing relating to the Cable Act. The first is that the Commission placed the highest priority on completing the various policy matters that were under reconsideration. Not only did this delineate more clearly the parameters under which the cable industry operates, but it placed the Commission in a better position to evaluate the range of staff required. Similarly, the Commission endeavored to select the leadership positions first, and committed to these individuals the responsibility for overall hiring. Finally, the Commission is an agency that, over the last decade, has had to confront decreasing resource levels, particularly in the personnel area. The Commission's lack of resource severely confines its ability to respond expeditiously to a range of priorities. The need to fulfill the staffing requirements related to the Cable Act, as well as completing consideration of the policy issues involved, efforts that require the energies of many of the same individuals, is symbolic of the difficulties the Commission faces.

The FY 1993 Supplemental Appropriation for the Commission provided funds to implement the requirements of the Cable Act, as well as, prevent anticipated furloughs of all Commission employees during the fourth quarter of FY 1993. \$6.1 million was allocated to provide the necessary ADP equipment and services for the Cable program, including personal computers, software and developmental contract services. An additional \$3.5 million was allocated for the cost of furniture, office equipment and supplies, space rental costs, telephone equipment and services, forms management services, technical equipment used in enforcement activities to monitor compliance with Commission rules and regulations by the Cable industry, the development of user fees. These funds were provided under indefinite or "no year" authority and remain available until expended to complete requirements associated with full implementation of the Act.

### User Fees

Question 1. You have endorsed the concept of fully funding the Commission through user fees. I am concerned about this concept because it seems to me that the Federal government is the initiator of the regulation, and should thus pay for the regulation. In fact, would this concept not set up perverse incentives to increase regulation for the purpose of raising fees?

**Answer:** I have endorsed the concept of fully funding the Commission through user fees. In the current environment it affords an ability to increase the Commission's capability and to carry out its responsibilities more expeditiously. The ability of the Commission to respond to technological innovation and entrepreneurial initiative promptly is a critical part of ensuring competition and economic growth.

An adequately funded Commission, through imposition of user fees, would not create an incentive to increase regulatory efforts where they are not needed. At the present time, the Commission is severely understaffed and, in many cases, operates inefficiently because of past funding shortages. Notably, fully funding the Commission through offsetting fee collections does not give the Commission direct control over the revenues generated by the user fees. The Commission would continue to be funded by appropriations and subject to imposed limitations on agency spending.

**Question 2. Have you talked with the President about the recent initiatives to divert current or future FCC fees to purposes wholly unrelated to FCC activities? Have you expressed any concern that this could adversely affect your ability to effectively regulate these industries?**

**Answer:** I have not discussed this issue with the President. I have consistently stated that I leave it to the Administration and the Congress as to how resources and revenues associated with FCC fees should be resolved. I have also indicated that the direct beneficiaries of government regulation should contribute, through user fees, to the offsetting of our regulatory costs, whenever feasible, taking into consideration the overall public interest.

#### **Cable**

**Question 1. I was encouraged to learn of your recent statements that the cable industry should be given incentives to add new programming. As you know, the 1992 Cable Act set up a regulatory structure that encourages the offering of a la carte channels rather than enhanced basic or upper tier service. I am interested in more details about these incentives.**

**Answer:** The FCC's rules seek to create and to preserve incentives for cable operators and programmers to expand their services and to invest in the future of information delivery technology while giving cable subscribers the best possible value for their dollar. The FCC has adopted rules which allow cable operators to recover a pre-set amount for each new channel added and to recover a mark-up of 7.5 percent over programming costs. Discussions with the industry has prompted us to further explore whether the current incentives are adequate or whether they should be revisited through our pending Further Notice of Proposed Rulemaking. We realize the importance of this issue to the cable industry, and as a result, extensive outreach efforts are underway. Pursuant to the Further Notice of

Proposed Rulemaking, we are taking into account the input furnished to us by the industry about the pros and cons of our original approach. Additionally, the FCC held a panel discussion and forum on this issue at the recent National Cable Television Association Convention, and continues to solicit input to ensure the cable industry is offered the necessary incentives to add creative new programming services and to continue building the National Information Infrastructure.

### PCS

Question 1. While I am pleased to learn of your plans to hold the narrowband spectrum auction on July 25, 1994, and that the broadband spectrum auction in the fall, I would like to point out that delays in this process have far reaching implications for the entire PCS industry. The delay of job creation and financial market uncertainty resulting in stunting the industry's growth. I would like to get some confirmation from you that the FCC will adhere to this schedule.

Answer. The Commission has been working diligently to implement its auction authority and to ensure the rapid deployment of personal communications services. This rapid deployment will improve our nation's economy and add to our information infrastructure by encouraging job creation and creating a more competitive wireless communications marketplace. In this regard, we have scheduled the first narrowband PCS auction to begin on July 25, 1994. We plan to hold the first broadband auction this fall. In order to achieve this rapid rollout schedule, the Commission has adopted general auction rules and service specific auction rules for the narrowband PCS service. The Commission has also released a public notice announcing the July narrowband PCS auction for the ten available nationwide licenses. In addition, Commission staff recently conducted an auction seminar to help bidders better understand the rules and procedures that will govern the first narrowband PCS auction. With respect to broadband PCS, the Commission completed its reconsideration of the broadband PCS service rules on June 9, 1994 and auction rules for broadband PCS on June 29, 1994. While there are matters beyond the Commission's control that may ensue, we think our actions should ensure a timely commencement of both the narrowband and broadband auction process.

### EEOC Guidelines

Question 1. I have been contacted by a small rural radio station in my district which is located in the far western suburbs of Chicago. It seems that in outlining the regions for calculating EEOC hiring guidelines, this radio station has been grouped in with Chicago. While the station has an exemplary record for the county it is located in, the station is unlikely to draw employees from Chicago. Thus an undue burden has been placed on this station. I am interested in hearing your comments on this predicament.

**Answer.** As an initial matter, the FCC's Equal Employment Opportunity (EEO) rules and policies do not contain "hiring guidelines." Rather, broadcast licensees are required to engage in continuing efforts to recruit, hire and promote women and minorities. One aspect of the Commission's evaluation of whether a licensee has engaged in adequate EEO efforts is the extent to which women and minorities are employed full-time at a station as compared to their representation in the relevant labor force.

Generally, the relevant labor force for evaluating a station's employment profile is the Metropolitan Statistical Area (MSA) in which the station is located. However, the Commission does permit the use of alternative labor force data, when certain conditions exist. The licensee you describe may use county data if it can demonstrate that: (1) the distance of the station from areas with significant minority populations is great; (2) commuting from those areas to the station is difficult (such difficulties may be based on distance but may also be based on other factors such as lack of public transportation); and (3) recruitment efforts directed at the Chicago MSA minority labor force have been fruitless. Should your constituent have this data it may be submitted to the Chief, Mass Media Bureau, F.C.C., 1919 M Street, N.W., Washington, D.C. 20554.



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 13, 1994

The Honorable Dan Schaefer  
U.S. House of Representatives  
2448 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Schaefer:

Thank you for the opportunity to respond in writing to the questions you asked me during the FCC reauthorization hearing before the House Subcommittee on Telecommunications and Finance on May 27, 1994. During that hearing and in your letter of May 27, 1994, you asked some questions regarding the Commission's deadlines for filing cost-of-service showings.

Your first question concerns pending cases where cable operators filed benchmark rate justifications prior to the effective date of the Commission's new rules (May 15, 1994) and subsequently decided to file cost-of-service rate justifications after the new rules went into effect. You asked whether cable operators who choose to switch from benchmark regulation to cost-of-service regulation would be required to file the cost-of-service showing by the July 14, 1994 deadline for cost-of-service refilings or the June 14, 1994 deadline for benchmark refilings.

I am enclosing a recent Cable Services Bureau order, and a recently-released "Q&A," that address the timing questions you raise. Operators filing cost-of-service rate justifications for rates in effect on or after May 15, 1994, must do so by July 14, 1994; this date is not affected by the format or basis of the operator's previous rate justification filing. The filing date may be deferred to August 15 if certain conditions apply, as follows: first, cable operators may not change their rates for, or restructure in any fashion, any program service or equipment offering between May 15 and July 14, 1994. Second, they must give subscribers at least 30 days' notice of any rate or service changes that they ultimately make in response to the new rules. Finally, they must complete all rate and service restructuring by July 14, 1994.

I fully share your commitment to minimizing administrative burdens on small cable operators. I believe the Commission demonstrated its commitment when it adopted the new rate regulations. Under the Commission's new rules, small cable operators are eligible for transition relief. This means that they do not have to reduce overall regulated revenues from March 31, 1994 levels until the Commission has completed a study of the costs faced by these systems. (Rate increases for small operators during this period will in most cases be limited to pass-throughs for external costs and changes in the number of regulated channels.)

The Honorable Dan Schaefer

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In addition, small cable systems that do not qualify for transition treatment may elect to avoid filing forms required of larger operators' simply by making 14 percent rate reductions for current billed services. Also, we are seeking to develop a schedule of the average equipment costs faced by small systems, so that the small operator would not need to calculate these costs; and the abbreviated cost-of-service form that the Commission adopted for small systems reduces the burden of making a cost-of-service showing. Finally, in our Further Notice of Proposed Rulemaking we sought comment on whether small systems and/or small operators should be exempt from uniform accounting requirements.

I hope I have fully answered all of your questions. I look forward to a continuing dialogue with you in the coming months on the many important issues facing the industry, consumers, and the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reed E. Hundt', with a large, sweeping flourish at the end.

Reed E. Hundt  
Chairman

Enclosures

## QUESTIONS AND ANSWERS ON CABLE TELEVISION RATE REGULATION

June 14, 1994

The Cable Services Bureau has received questions from cable operators and other interested parties concerning the Commission's revised rules governing cable rate regulation. The following questions and answers provide guidance on a variety of issues of general interest regarding the revised rules. Previous sets of Questions and Answers were released on April 26, May 6, May 18, and June 1, 1994.

Form 1200

**Q1: Can Form 1200 be used for a system with more than 5 tiers?**

**A1: A system with more than 5 tiers will not be able to use the Commission's electronic spreadsheet for Form 1200. For a system with more than five tiers, the Form 1200 must be submitted on the official FCC paper form with additional sheets attached as needed.**

**Q2: If a cable operator raised its rates effective October 1, 1992, the first day of a monthly billing period, but the bill for that period was payable on or before September 30, 1992, what was its monthly charge per tier as of September 30, 1992 for purposes of completing line G2 of FCC Form 1200?**

**What was its monthly charge per tier as of September 30, 1992 if it raised its rates effective September 15, 1992 and the bill for the September 15 to October 14, 1992 period was payable on or before September 30, 1992?**

**A2: As indicated in the Instructions for Line G2 of FCC Form 1200, the operator should use the rate reflecting its "standard monthly charge for the last whole monthly billing period ending on or before September 30, 1992." The charge for the last whole monthly billing period ending on or before September 30, 1992 is the rate in effect for last whole period billed for ending on or before that date regardless of when the bill was sent. Thus, in the first example in this question, the rate for the last whole monthly billing period ending on or before September 30, 1992 would be the rate in effect for September 1 to 30, 1992 (presumably paid on or before August 31, 1992). In the second example, the rate for the last whole monthly billing period ending on or before September 30, 1992 would be the rate in effect from August 15, 1992 to September 14, 1992.**

External Costs

- Q3:** The instructions for Module B of Form 1210, refer to changes in external costs that have been "incurred." Does a change in external costs actually have to have been paid during a quarter in order to be considered as incurred and included in Form 1210 for that quarter?
- A3:** External cost increases may be claimed on Form 1210 provided that the increased external cost was recognized on the books of the operating company during the previous quarter. This would apply to expenses that were paid or accrued during that period. For example, an operator offers a new programming service in January that will increase its compulsory copyright license fees. Those fees will not actually be paid until the third quarter. If the expense for the first quarter was accrued during the period and the cost was recognized on the books of the operating company during the first quarter, then the increase can be included on the Form 1210 that can be filed in the second quarter.
- Q4:** For what portion of a quarter must a new or increased external cost exist in order to be claimed on a Form 1210 filed during the following quarter? If an external cost increase occurs during the last month of a quarter, and as a result only a partial month's cost appears on the cable operator's books for that quarter, may the cable operator claim the full increased cost during the following quarter?
- A4:** An external cost may be claimed on a given Form 1210 provided that the increased external cost was recognized on the books of the operating company during the previous quarter. This would apply to expenses that were paid or accrued during that period. There is no minimum portion of a quarter during which the service must be offered or the cost must be recognized. The increase in external costs may be claimed to the full extent of the monthly increase, even if the cable operator recognized on its books only a prorated portion of that increase during the final month of the previous quarter. To the extent that claimed external costs differ from the costs actually shown on the operator's books, the operator should attach to Form 1210 an explanation of the difference.

Notice

- Q5:** May cable operators use "any reasonable and feasible means" (such as on-screen programming or newspaper publication), to provide notice of rate or service changes, as well as to provide notice of subscribers' right to file complaints with the Commission and franchising authorities?

- A5: The Commission's rules allow cable operators to provide notice through on-screen notification, only with respect to subscribers' right to file complaints with the Commission concerning rate and associated equipment changes for cable programming services and only with respect to rate changes becoming effective before July 15, 1994. See 47 C.F.R. Section 76.964(c)(April 14, 1994 Erratum to Second Order on Reconsideration). Otherwise, written notice must be provided as specified in the Commission's rules, unless a waiver is granted. See e.g., fX Channel Letter (released May 9, 1994, by Acting Chief, Cable Services Bureau). (Waiver allowing operators launching new programs services during refund deferral period to provide on-screen or newspaper notice in certain circumstances.)

#### Deadlines for Filing Cost-of-Service Showings

- Q6: If a cable operator filed a benchmark rate justification prior to May 15, 1994 and decides to change to cost-of-service regulation to justify rates in effect on or after that date, when will the operator be required to file its cost-of-service showing?
- A6: Rate justifications filed by cable operators prior to May 15, 1994 are used to evaluate rates from September 1, 1993 through May 14, 1994. Cable operators may correct or modify these filings, provided that they do so by June 24, 1994, in the case of benchmark justifications, or July 14, 1994, in the case of cost-of-service justifications. See the Cable Services Bureau's order released June 14, 1994.<sup>1</sup>

Cable operators who filed rate justifications (either benchmark or cost-of-service) prior to May 15, 1994, must file new rate justifications with the Commission or local franchising authorities for the purpose of evaluating rates in effect on or after May 15, 1994. Operators filing under benchmark regulations must file on FCC Form 1200 by June 15, 1994, or, if the refund deferral provision of §76.922(b)(2)(B) applies, by August 15, 1994. (See Question and Answer number 7 below). Operators filing under cost-of-service regulations must file on FCC Form 1220 or 1225 by July 14, 1994, or, if the refund deferral provision of §76.922(b)(2)(B) applies, by August 15, 1994. (See Question and Answer number 7 below).

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<sup>1</sup> Cable Operators' Rate Justification Filings, Order, DA 94-619, dated June 14, 1994.

- Q7:** Does the deferral of refund liability provided for in Section 76.922(b)(6)(B) of the Commission's rules apply to cable operators who choose to justify their rates under our cost-of-service rules, as well as to operators who justify rates under the revised benchmark rules?
- A7:** Yes. Under Section 76.922(b)(6)(B), all cable operators who are subject to rate regulation on May 15, 1994, including cable operators who are filing cost-of-service rate justifications, have until 30 days after restructuring (but no later than August 15, 1994) to file their rate justifications without incurring any refund liability, provided that they meet the conditions for refund deferral set forth in Section 76.922(b)(6)(B). The Cable Services Bureau recently granted an extension of the refund deferral period until September 1, 1994, for small operators. See the Cable Services Bureau's Order (DA 94-592) dated June 7, 1994.

#### Spreadsheet Versions of Forms

- Q8:** In the instructions to the paper form of Form 1220, line 50 is the total of lines 48 + 49, but in the electronic (spreadsheet) version of the Form 1220, line 50 is the sum of lines 47 + 48 + 49. Similarly, in the instructions to the paper form, line 56 is the sum of lines 52 through 55, but in the spreadsheet it appears to be the sum of lines 51 through 55. Are the instructions for the paper Form 1220 correct or is the spreadsheet correct?
- A8:** The spreadsheet version is correct. The error is in the instructions to the paper form. In both the paper and spreadsheet versions of Form 1220, line 50 should be the sum of lines 47 through 49 and line 56 should be the sum of lines 51 through 55. See Cable Operators' Rate Justification Filings, Order, DA 94-619, dated June 14, 1994.
- Q9:** On the spreadsheet versions of FCC form 1220 and 1225, should Depreciation, Amortization, and Deferred Taxes be entered as positive or negative numbers?
- A9:** They should be entered as negative numbers. As stated in the coversheet included with the spreadsheets, Depreciation, Amortization and Deferred Taxes are expected to have credit balances that are to be calculated as reductions to the ratebase investment in the Schedule A calculations. To have the spreadsheets properly calculate the ratebase reductions, these items must be entered as negative numbers. They must be entered as negative numbers across all columns for which data is to be entered, except that an adjustment (in Column B of the Form 1220 and Form 1225) may require a positive entry when it is intended to reduce the credit balance.
- Q10:** On the Lotus 1-2-3 for DOS version of the FCC Form 1210, Line B11d shows an error for any empty tiers on the spreadsheet. How can this problem be corrected?
- A10:** This problem exists only on the Lotus 1-2-3 for DOS versions of the FCC Form 1210 spreadsheet. To correct the problem, simply enter 1 for all empty tiers in line B11c to avoid a division by zero and properly calculate the external costs in module B.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

DA 94-619

In the Matter of	)	
	)	)
Cable Operators' Rate	)	
Justification Filings	)	

**ORDER**

Adopted: June 13, 1994

Released: June 14, 1994

By the Chief, Cable Services Bureau:

1. Several parties have requested clarification or extension of various filing deadlines for both benchmark and cost of service rate justification filings. In this Order, we clarify our deadlines and we grant in part an extension of time for submissions to correct or amend pending cost-of-service filings. We retain all other filing deadlines unchanged.

2. With regard to the requests for clarification, we note that there are currently two sets of filings, with separate deadlines for each:

Pending filings. Pending filings (both benchmark and cost of service) are those that seek to justify rates that were in place from September 1, 1993 to May 14, 1994. These pending filings, whether benchmark or cost of service, may be modified and/or corrected, according to the Bureau's May 23 Order,<sup>2</sup> until June 24, 1994.

New filings. Filings to support rates in effect on or after May 15, 1994 have the following deadlines:

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<sup>2</sup> Cable Operators' Rate Justification Filings, Order, DA 94-526, released May 23, 1994 (May 23 Order). The correction or amendment of pending cost-of-service filings does not require use of the forms adopted in the Cost Order; those forms are required for cost showings supporting rates in effect on or after May 15, 1994 only.

Benchmark filings: Must be submitted on FCC Form 1200 (and related forms) by June 15, 1994, pursuant to §76.922(b)(6)(A); this deadline can be deferred, if conditions are met, to August 15, 1994, pursuant to §76.922(b)(6)(B).

Cost of Service filings: Must be submitted on FCC Form 1220 or 1225 by July 14, 1994, pursuant to footnote 60 of the Cost Order,<sup>3</sup> this deadline can be deferred, if conditions are met, to August 15, 1994, pursuant to §76.922(b)(6)(B).<sup>4</sup>

These filing deadlines for justifications of rates in effect on or after May 15, 1994 are dependent on the form of rate justification the operator selects, and are not affected by the form of rate justification an operator submitted for rates prior to May 15, 1994.<sup>5</sup>

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<sup>3</sup> Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation. MM Docket Nol. 93-215, FCC 94-39, released March 30, 1994, 59 Fed. Reg. 17975 (Apr. 15, 1994) (Cost Order) at n.60.

<sup>4</sup> We believe that confusion may have arisen regarding the filing deadline for cost-of-service showings due to the wording of note 60 of the Cost Order, and the omission of this requirement from the rules as adopted. The July 14 filing date established for cost-of-service filings acknowledges the greater complexity of such filings compared to the benchmark filings, for which a June 15 date was established. As noted here, however, both cost-of-service and benchmark filings justifying rates going forward may be deferred to August 15 by an operator that satisfies the conditions spelled out in Section 76.922(b)(6)(B) of the rules. This deferral does not apply to showings already pending.

<sup>5</sup> That is, an operator with a pending benchmark showing that decides to file cost-of-service justification for going-forward rates has the same filing date for the cost-of-service submission as it would have had if its pending showing were also cost of service. Similarly, an operator filing a benchmark justification for going-forward rates, but having a pending cost-of-service showing for pre-rules rates, is held to the benchmark filing date.

3. We have received requests, by letter and motion, for extensions of time on the filing deadlines noted above.<sup>6</sup> Some parties request that the June 24 filing date for correction or amendment of pending cost-of-service filings be extended to July 14. They assert that July 14 itself could be a challenging deadline, and that operators should have the time until July 14 in order to assure that the resulting showings are accurate and reliable.

4. We agree with the reasoning set forth above, and we accordingly grant the requested extension of time, for correction or amendment of pending cost-of-service filings, to July 14, 1994.<sup>7</sup>

5. This extension does not apply to the correction or amendment of pending benchmark filings; these submissions are still due on June 24, 1994.

6. It has also been suggested, in letters and motions, that all filings, cost-of-service or benchmark, pending or new, be due on August 14.<sup>8</sup> Parties urging this extension state that the pending filing and the new filing, where both are cost-of-service filings, draw on the same data, use the same allocations, and perform many of the same calculations; and that the two filings can therefore be approached most efficiently, and with the greatest likelihood of accurate results, if their filing deadlines are the same. These parties assert that this unity of filing dates would be simplest and most efficient, and would best assure the reliability of the submissions made.

7. We deny this overall extension request because we find that it is unnecessary and unsupported. Because the June 24 benchmark amendment filing deadline and the newly established July 14 cost-of-service amendment filing deadline concern filings that are at the operator's option and that simply amend or correct already-submitted showings, we believe that the time periods established are reasonable, and allow operators adequate time to assure that these filings are reliable.

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<sup>6</sup> See, e.g., Letter of May 26, 1994, from Christopher W. Savage to Kathleen M. H. Wallman, Acting Chief, Cable Services Bureau; Letter of June 1, 1994, from Shirley Coleman, Prime Cable, to Mary Ellen Burns, Chief, Consumer Protection Division.

<sup>7</sup> Our action here changes the procedural dates established by the Commission, but does not, absent action by local franchising authorities, affect deadlines that they have established.

<sup>8</sup> See Savage Letter, *supra* n.5. This suggestion has also been made informally, for example in telephone contacts.

8. Finally, we have received a "Petition to Extend Deferral Period" from Fleischman and Walsh ("Fleischman"), a law firm representing several cable television operators. Fleischman argues that alleged inconsistencies between the Commission's written instructions for completing FCC Form 1220, the cost-of-service form to be used in showings to justify rates in effect on or after May 15, 1994, and the Commission's computer spreadsheet program for that form, create the need for an extension, until September 1, 1994, of the refund liability deferral period and of the cost-of-service filing date. Fleischman notes that the written instructions direct the operator to sum two items of interest expense, and four of revenue and income adjustments, while the spreadsheet directs the operator to sum three items of interest expense and five of revenue and income adjustments. Fleischman argues that this discrepancy produces vastly different results, and may result in operators' reevaluating their use of cost-of-service rather than benchmark rate support. Fleischman urges that more time is needed to allow operators to evaluate their rate support, provide subscribers with appropriate notice, and complete the required forms.

9. It is true that the written instructions erroneously cite lines 48-50 and 52-56 rather than lines 47-50 and 51-56 as the lines to be summed. However, the complete language of the instructions, viewed in context, makes clear that all the lines in question are to be included. The instructions for line 50 read, "Compute the total interest expenses." This follows immediately the introductory caption: "Interest Expenses (Lines 47 through 50)." In this context, it should have been evident to parties basing their rates on the cost-of-service process that an instruction to sum only line 48 and 49 was incorrect. The same is true with respect to the line 51-55 calculations regarding revenue and income adjustments.

10. Both the paper and electronic versions of the form itself also make this intention clear. In both cases, the form provides a boldface caption followed by several line items, then a boldface total line for that group. **Interest Expenses** is followed by three line items, then **TOTAL INTEREST EXPENSES**. **Revenue and Income Adjustments** is followed by five line items, then **TOTAL REVENUE AND INCOME ADJUSTMENTS**. Despite the instruction's specificity, it should have been evident upon a fair reading, in context, that the **TOTAL** entry should include all the line items in the captioned group or at least that further inquiry was appropriate.

11. We accordingly deny Fleischman's petition for a blanket extension of the deferral period. To the extent that an operator has actually relied on the instructions, however, and has incurred expense as a direct consequence, we will entertain petitions for special relief to provide additional time to resolve the difficulties resulting from actual reliance on the incorrect instructions. An operator requesting such relief should demonstrate with specificity its reliance and the direct relationship between any expenditures incurred and the erroneous instruction.

12. Accordingly, IT IS ORDERED that the due date for filings amending or correcting pending cost-of-service showings IS EXTENDED TO JULY 14, 1994.

13. IT IS FURTHER ORDERED that the petition of Fleischman and Walsh IS DENIED.

14. IT IS FURTHER ORDERED that all other filing deadlines discussed above ARE RETAINED UNCHANGED.



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 13, 1994

The Honorable Bill Richardson  
U.S. House of Representatives  
2349 Rayburn House Office Building  
Washington, D.C. 20510

Dear Congressman Richardson:

Enclosed are responses to the questions you submitted with regard to the authorization hearing of the Federal Communications Commission. Please call upon me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed E. Hundt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Reed E. Hundt  
Chairman

cc: The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications and Finance  
Committee on Energy and Commerce

**CONGRESSMAN RICHARDSON'S QUESTION****Why Does the Fox Network Receive Preferred Treatment Under FCC Rules?**

Last week, as the result of an inquiry initiated by the NAACP, we learned for the first time that a foreign corporation owns more than 99 percent of the equity in Fox. At almost the same time, we were informed that Fox had embarked on a sweeping, and apparently successful, campaign to strip important major-market affiliates away from the older, U.S.-owned networks. Earlier, of course, Fox succeeded in purchasing NFL broadcast rights. In this intensely competitive environment, how can the FCC justify continuation of a policy that grants the Fox network preferential exemptions from stringent regulations (such as PTAR and Fin/Syn) that continue to burden its American competitors? Can you promise to look into this promptly and give us a full report?

**Answer.** The Commission's network regulations were crafted, in part, to encourage the growth of additional networks and independent programming sources. Based on broad changes in the programming marketplace and the declining power of broadcast networks generally, the FCC in 1991 issued a decision relaxing the limits on broadcast networks embodied in the financial interest and syndication ("finsyn") rules. The decision made no special allowance for emerging networks like Fox, but rather concluded that the revised rules should apply to any entity that programmed more than 15 hours of prime time programming a week to affiliates reaching 75 percent of television households. In a 1992 decision, the United States Court of Appeals for the Seventh Circuit reversed the FCC's 1991 finsyn decision as arbitrary and capricious. Among other things, the Court questioned the appropriateness of a network definition based on an hourly prime time threshold that would restrict competition by emerging networks, such as Fox, with established networks by discouraging them from programming to capacity.

In 1993, in response to the court's decision, the Commission significantly relaxed the finsyn rules and created a mechanism for their automatic sunset in a fixed period of time. The rules are now set to expire in November 1995. In consideration of the concerns expressed by the court about the adverse effects on the growth of new networks such as Fox resulting from the 15-hour programming threshold, the Commission created an exemption for "emerging networks," i.e. those that had never before been subject to finsyn regulation. The Commission concluded that it would be inappropriate to subject emerging networks to a scheme of regulation initially devised under very different conditions and scheduled to expire in the near future. With particular reference to Fox, the Commission found credible Fox's claim that it would not provide programming in excess of any threshold that would require it to divest its television syndication business. The

Commission concluded that causing Fox to limit artificially the programming it supplies to its affiliates in order to avoid restructuring its business would disserve the public interest in competition and diversity. The Commission thus exempted entities like Fox from the remaining finsyn restrictions but required emerging networks to comply with the reporting requirements imposed on NBC, ABC, and CBS during the remaining life of the rules once they provide 16 hours of prime time programming.

With respect to the prime time access rule ("PTAR"), the Commission has not created any exception for emerging networks per se, although it did exempt from the ambit of PTAR certain programming created by an entity before it becomes subject to the rule. Thus, Fox would be subject to PTAR when it provides more than 15 hours of prime time programming per week to its affiliates, but certain programming produced or in the pipeline prior to that would not be subject to the limitations established under the rule. On April 12, 1994, the Commission invited public comment on whether PTAR should be modified or repealed. The comment period closed on June 14, 1994, and reply comments are due on July 14, 1994. The record developed will enable the Commission to decide whether, to revise the rule, including, for example, whether to extend the rule to entities not now covered.

More generally, the question of whether, and to what degree, the public interest warrants continued regulation of the major networks in other respects is under review in MMB Docket No. 91-221, In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, begun by the Commission in 1992. The staff is preparing a recommendation to the Commission about what further action it should take in that proceeding.

Finally, Fox's compliance with Section 310 of the Communications Act is a matter presently under review by Commission staff. The pleading cycle in that proceeding closed on June 10, 1994. Parties participating in the proceeding include the NAACP. As the proceeding is "restricted" under the Commission's ex parte rules, we are not in a position to comment. We intend to rule on this matter as expeditiously as possible.



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 13, 1994

The Honorable Mike Synar  
U.S. House of Representatives  
2329 Rayburn House Office Building  
Washington, D.C. 20510

Dear Congressman Synar:

Enclosed are responses to the questions you submitted with regard to the authorization hearing of the Federal Communications Commission. Please call upon me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Reed E. Hundt", written in a cursive style.

Reed E. Hundt  
Chairman

cc: The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications and Finance  
Committee on Energy and Commerce

## QUESTIONS from Congressman Mike Synar

Question 1. The Commission's "going-forward" regulations permit cable operators to pass through to consumers the increased costs of adding new program services to regulated tiers of service. Many cable operators are now attempting to complete the form necessary to begin passing through these costs. However, the form is unclear on one key point: when are program expenses "incurred" for purposes of pass throughs-- when they are carried on the operators's book as an expense or, when they are actually paid? If cable operators cannot pass through costs until paid, this could lead to delays of up to 10 months or longer before operators could pass through their increased program expenses for services subject to statutory copyright payments (such as superstations).

I am concerned that these delays will deter cable operators from adding superstations or other program services to regulated tiers of service and that consumers will be confused by rate adjustments occurring nearly one year after a new channel is added. Instead cable operators will be forced to add new program services on an a la carte basis which will probably cost the consumer more.

Does the Commission plan to address this issue? If so, how?

Answer: Recognizing the industry's concern about this matter, the Cable Services Bureau addressed this issue on June 14, 1994 in its "Questions and Answers on Cable Television Rate Regulation" released on that date. Question #3 was directed to external costs, which include copyright fees. We responded stating that operators do not necessarily have to wait to pass through such costs until the fee is actually paid. We specifically stated:

"External cost increases may be claimed on Form 1210 provided that the increased external cost was recognized on the books of the operating company during the previous quarter. This would apply to expenses that were paid or accrued during that period. For example, an operator offers a new programming service in January that will increase its compulsory copyright license fee, but those fees will not actually be paid until the third quarter. If the expense for the first quarter was accrued during the period and the cost was recognized on the books of the operating company during the first quarter, then the increase can be included on Form 1210 which can be filed in the second quarter."

Question 2. The going-forward rules permit cable operators to pass through program expenses associated with the addition of new programs services in the quarter following when the expense was incurred. Under the rules, cable operators will have to wait a minimum of one month before they can begin passing through their increase program expenses. The vast majority of program services will be able to adjust their billing practices to conform to this scheme by instituting pre-

payment. This is not an option for those program services subject to statutory copyright payments (such as superstations) since copyright payments must be paid semi-annually in arrears and cannot be pre-paid. As a result the going-forward rules unintentionally discriminate against superstations.

Consumer demand for superstations remains high, yet cable operators are discouraged from adding superstations because they will be required to wait much longer to pass through their copyright expenses as compared to the expenses associated with the addition of non-superstation program services.

Does the Commission plan to address this matter? If so, how?

**Answer:** This issue was also addressed by the Cable Services Bureau in its June 14, 1994 "Questions and Answers on Cable Television Rate Regulation" release. Question #3 was also directed to external costs, which include copyright fees. We responded stating that operators do not necessarily have to wait to pass through such costs until the fee is actually paid.

**Question 3. How many full-time auditors are assigned to the Audits Branch of the CCB and how many of them are actually conducting audits of the dominant common carriers' compliance with the accounting rules full-time?**

**Answer:** The Audits Branch of the Accounting and Audits Division of the Common Carrier Bureau has 15 full-time auditors. All of these auditors perform audits of dominant common carriers on a full-time basis. The Commission is presently in the process of hiring ten additional auditors, consistent with its recent hiring authorization.

**Question 4. How many audits did the Commission complete in FY'93? How long had each of those audits been in progress?**

**Answer:** The Audits Branch of the Accounting and Audits Division of the Common Carrier Bureau engages in two basic forms of audit activity: field audits of dominant carriers' compliance with the Commission's accounting rules; and audit reviews of the yearly external audits of carriers' cost allocation manuals (CAMs) and related financial data. Field audits involve detailed evaluation of carrier operations, such as time reporting procedures, and include on-site audit tests of carrier operations. Most field audits are completed within a year although industry-wide or joint federal/state audits which involve more than one carrier and/or auditors from several state jurisdictions usually take about two years.

In FY-93, the Audits Branch began nine field audits of dominant common carriers. Five of these were completed within six months, three were completed within a year, and one is still in progress. In addition, two field audits that commenced in

FY-92 were also completed in FY-93. One of these audits took 12 months to complete and the other audit took 24 months to complete.

In the CAM audit reviews, the Commission staff evaluates the effectiveness of the external auditors' work by reviewing their audit workpapers. On-site reviews of the CAM audits are not usually conducted. CAM audit reviews are usually completed within two months although more complex CAM audit reviews may take three to four months to complete. In FY-93, the Audits Branch completed 16 CAM audit reviews of dominant common carriers.

**Question 5.** If the number of full-time auditors assigned to the Audits Branch is less than 14 -- the number reported in the 1993 GAO report -- what are the reasons for the decline? Would one reason be " a higher priority" perceived to be elsewhere? If so, what is/are the higher priorities?

**Answer:** The Audits Branch of the Accounting and Audits Division of the Common Carrier Bureau currently has 15 full-time auditors. In addition, the Commission is presently in the process of hiring ten additional auditors, consistent with its recent hiring authorization. Overall, the Commission's strained resource circumstance is the major factor more resources have not been committed to audit efforts.

**Question 6.** Has the FCC requested additional common carrier auditing resources since then-Acting Chairman Quello's testimony before the House Telecommunications Subcommittee in June of 1993? If so, please explain.

**Answer:** In the spring of 1994, the Commission determined that it needed additional audit resources immediately to monitor dominant carrier compliance with its accounting rules. The hiring of ten additional auditors as well as two additional attorneys to support the auditing functions and to expedite related audit enforcement actions was authorized. The Commission is now in the process of filling these positions and we anticipate the new positions to be filled by September, 1994. Moreover, the Commission is pursuing an amendment to the FY 1995 budget that would provide augmented resources for audit efforts.

**Question 7.** Are there any open auditor positions in the Audits Branch that have been posted? If so, how many have been posted and for how long? What is the current status of any such postings?

**Answer:** The Commission has been authorized to hire 12 additional audit-related personnel. The Commission expects to use this authorization to hire 10 new auditors and two new attorneys for the Accounting and Audits Division of the Common Carrier Bureau. The 10 auditor positions were posted in May 1994, with applications due in June, 1994. Over 300 candidates applied for these positions. The Commission has completed the initial screening of the applications and has

commenced the interview process. We anticipate extending offers of employment during July, 1994 and expect to have the new auditors begin employment during August and September, 1994. At the present time, offers of employment have been extended to two attorneys, who are expected to begin employment by September, 1994.

**Question 8. Have any auditors in the Audits Branch been temporarily assigned or detailed to other offices on duties within the Commission? If so, please explain.**

**Answer:** In FY-93, due to the high priority of cable regulation and the relative lack of auditing expertise in the cable group, the Commission detailed two auditors to the cable group for about six months. In addition, another auditor assisted the cable group for about 20 days.

**Question 9. Are there any other FCC personnel conducting such audits, and, if so, have they been detailed from some other part of the FCC? If so, please explain.**

**Answer:** There are no other FCC personnel conducting audits of dominant common carriers. The Audits Branch of the Enforcement Division of the Common Carrier Bureau conducts all such audits. Presently, the only other audit function of the FCC is in the Office of the Inspector General, which audits the Commission's internal operations. It is also expected that the Cable Services Bureau will perform audits of cable television operations.

**Question 10. Did the FCC determine the methodology and calculate the CPI index used to measure long distance price changes reported in Table 5 of the FCC's recently-released Telephone Trends publication? If the FCC does not originate the statistic, who does.**

**Answer:** The Bureau of Labor Statistics (BLS) calculates the Consumer Price Index (CPI) and all of the CPI sub-series, including the interstate toll index. The BLS also calculates the Producer Price Index (PPI) series. The BLS first published the telephone service price index for 1935, and has been publishing the CPI interstate toll index since January, 1978. The FCC does not determine the index methodology used by the BLS. The index values are first published by the BLS and the FCC republishes these indexes along with a variety of other data on telephone service prices.

**Question 11. If you were called upon to give advice as to how the long distance pricing statistic should be updated to most accurately portray long distance telephone pricing, what advice would you give.**

**Answer:** Competition in the long distance industry has led to increased segmentation and complexity as new services have been introduced. Consequently, relying on any one measure of long distance pricing may not

accurately portray pricing trends. In the past, the Commission has found that both the Consumer Price Index (CPI) and the Producer Price Index (PPI) series, as well as other measures, including measures of average revenue per-minute and the indexes used to ensure compliance with our price cap rules, provide useful information about pricing trends in the long distance market.

The Commission understands that the Bureau of Labor Statistics (BLS) is considering revisions to its CPI series that would give more weight to discount plans. Incorporating discount plans would raise difficult measurement issues e.g., regarding marginal versus average per-minute prices. Separate price indexes that measure basic rates may also offer another useful measure of long distance pricing. Similarly, a separate price index for international calling by residential customers, which now exceeds \$5 billion per year, might also assist in understanding long distance rate trends. Different indexes could illuminate effects on different types of subscribers by more closely reflecting their calling patterns.

There have been reports recently which indicate that the Commission is rushing forward with video dialtone and planning to grant some of the Section 214 filings of the Bell companies without basic rules in place about such fundamental issues as how costs will be allocated and what sort of safeguards and accounting rules will be in place. These are no longer experimental applications, but rather would serve millions of households. A joint petition was filed by CFA and the NCTA urging a rulemaking on these issues. Since there are tens of billions of dollars at stake for construction and other costs already in the petitions filed and billions more down the road, how can we adequately protect consumers and let companies know what their responsibilities are if we only deal with video dialtone issues on an ad hoc basis? When will there be a rulemaking on these issues?

The Commission found in the Video Dialtone Order that its existing safeguards designed to prevent unlawful cross-subsidization and other anticompetitive behavior were sufficient as an initial matter to protect consumers and competitors. These existing rules require carriers to comply with uniform cost accounting and allocation standards, govern the allocation of joint and common costs, govern affiliate transactions, and dictate applicable reporting requirements.

As anticipated, the Commission has thus far been addressing the issues raised by applications for proposed individual video dialtone systems on a case-by-case basis. To date, the Commission has approved five applications for video dialtone trials and one application for a commercial video dialtone offering to 38,000 homes in Dover Township, New Jersey. In conjunction with each video dialtone authorization, the Commission has required carriers to comply fully with its existing rules.

The Commission also has imposed special conditions designed to protect consumers from unlawful cross-subsidization in the context of these video dialtone authorizations. For example, carriers authorized to conduct video dialtone trials

have been required to segregate video dialtone costs from all other telephony costs and to ensure that the costs associated with construction and operation of the trial video dialtone systems are not borne by telephone ratepayers. For the commercial video dialtone offering, the Commission also has required the telephone company to comply with any future safeguards designed to prevent cross-subsidization, such as costing and pricing rules. These safeguards and conditions on authorizations should adequately protect consumers as local telephone companies invest in video dialtone systems.

Certain parties seeking reconsideration of the Video Dialtone Order, as well as CFA and NCTA in their Joint Petition for Rulemaking, have argued that there should be changes in the cost allocation and pricing rules that apply to video dialtone in order to ensure that the telephone companies do not engage in anticompetitive behavior. The Commission is currently reviewing the petitions and the extensive record developed in connection with them. The Commission recognizes the importance of these issues and has devoted additional staff to these issues to ensure the timely disposition of these petitions.











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