

Summary of Testimony of FCC Commissioner Mignon L. Clyburn
U.S. House of Representatives Committee on Energy & Commerce
Subcommittee on Communications & Technology
Oversight of the Federal Communications Commission

March 19, 2015

- The FCC adopts policies to promote innovation and investment and takes into account the needs of all stakeholders as it fulfills its statutory mandates and regulatory role.
- In March 2014, we unanimously adopted rules to auction 65 megahertz of spectrum in the AWS-3 bands. This auction will enable wireless carriers to meet the demand on their networks. The success of this auction was due, in large part, to a painstaking effort to pair the 1755 to 1780 and 2155 to 2180 bands that involved the broadcast and wireless industries, federal agencies and members of this Committee.
- We should follow a similar collaborative approach as we finalize rules for to the world's first ever voluntary incentive auction. We unanimously adopted a Notice of Proposed Rulemaking that seeks to strike the proper balance between licensed and unlicensed services. We also initiated a proceeding to update our Competitive Bidding rules to enable small businesses to compete more effectively and sought comment on whether we should do more to deter unjust enrichment.
- We made strides towards our goal of universal broadband for all Americans with our Connect American Fund. The FCC also updated the E-rate program, to ensure that all children receive access to the best technology and world-class digital learning.
- The FCC's 2012 Lifeline reforms closed long-standing loopholes that have saved consumers a whopping \$2.75 billion – exceeding projections by \$750,000,000. While this is incredibly significant, Lifeline still supports voice only and needs real modernization. We need a totally restructured program -- one that removes the carrier from determining whether a customer is eligible for service and ensures that every dollar counts as we get the most bang for each universal service buck.
- We must continue to reform the exorbitantly high interstate and intrastate inmate calling fee structure. Our 2013 reforms have produced significant, positive results, but there is much more left to do. Regardless of your views when it comes to inmates and those accused, there are 2.7 million children with at least one parent incarcerated and they should not be the ones punished.
- The FCC's 2010 Open Internet rules brought certainty and promoted the tremendous levels of opportunity and growth. I am pleased that the FCC responded to the D.C. Circuit's remand and reinstated strong, enforceable rules. But I also respect Congress's desire to evaluate a legislative solution, and stand ready to assist to achieve our mutual goal for a free and open Internet and a thriving ecosystem.
- Finally, the progress we are making in implementing the STELA Reauthorization Act of 2014 should be commended. As required under the statute, the FCC has established a working group of technical experts, to study and recommend a downloadable security system that can be used in conjunction with navigation devices, such as set-top boxes, to promote greater competition for such devices.

Testimony of
Mignon L. Clyburn
Commissioner
Federal Communications Commission

U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology

Oversight of the Federal Communications Commission

March 19, 2015

Chairman Walden, Ranking Member Eshoo, and distinguished Members of the Committee, thank you for the opportunity to once again share my perspectives with you today.

By most objective measures, investment and innovation in the communications marketplace have been, in a word, robust. This explosive growth represents one of the key drivers in our national – and indeed – the global economy. New companies and nascent technologies are spawning fresh products and services at breakneck speed. The expansion of our broadband footprint along with the widespread embrace of mobile devices, and a groundswell of video produced by an ever-widening crop of content creators, are being delivered over new and novel platforms. Both start-ups and established companies are essential in the American narrative and as consumers and commercial entities adopt and embrace this evolution, the capital markets respond.

Guided by the laws set forth by Congress, the Federal Communications Commission carefully considers the needs of consumers and service providers as it fulfills its statutory mandate and regulatory role. The FCC employs some of this nation’s brightest and hardest working public servants, who strive to

do what is right. I believe, Mr. Chairman and distinguished members of the Committee, that all five commissioners appearing before you today play important roles in the development of policies that protect consumers and promote universal service, competition, innovation and investment in the American communications and technology sector.

We are called upon to decide many complex and often contentious issues and like any group of strong-willed individuals, we do not always agree. But it is worth noting that 90 percent of the Commission's items are approved unanimously. That is not a bad outcome. And I believe we can all agree that, since my last appearance before this committee in December 2013, the Commission has been quite active in adopting a number of significant Orders that have spurred tremendous investment in this nation.

In March 2014, we unanimously adopted the licensing and service rules to auction 65 megahertz of spectrum in the AWS-3 bands. This was the first auction of multiple paired blocks of spectrum the Commission had held in six years. Since mid-2010, we have witnessed explosive consumer demand for mobile broadband services, so this auction was important to give wireless carriers the spectrum they need to meet the demand on their networks.

But it was also important for us to meet the Congressional directive to design an auction that promotes more competitive options for wireless consumers. My colleagues and I agreed on a band plan that included smaller license blocks and geographic license areas. We also agreed to mandate interoperability between AWS-1 and AWS-3 bands.

Such rules encourage participation by carriers who may have a smaller service footprint than nationwide providers, yet possess a strong desire to acquire more spectrum to serve a particular area. This approach promotes competition in local markets and has the added benefit of ensuring that the auction promotes efficient allocation of spectrum to the highest and best use.

Most experts predicted that increased consumer demand for mobile services would result in robust bidding in the AWS-3 auction. But no analyst predicted that the total amount of winning bids would exceed \$18 billion. In fact, the final gross total of winning bids was a record setting \$44.89 billion.

The success of this auction was due, in large part, to a painstaking effort to pair the 1755 to 1780 and 2155 to 2180 bands that involved the broadcast and wireless industries, federal agencies and members of this Committee. We commend all those stakeholders for reassessing what really matters, finding common ground and doing the right thing, for the American people.

We should follow a similar approach as we work towards finalizing rules to implement the world's first ever voluntary incentive auction. Encouraging smaller carriers to participate is also important to the success of this auction, because we must incentivize broadcast TV stations to take part in the reverse auction. Both large and small carriers developed a consensus band plan that allowed us to shift from large Economic Areas to smaller Partial Economic Areas. We unanimously adopted a Notice of Proposed Rulemaking that seeks to strike the proper balance between licensed and unlicensed services and accommodate the needs of incumbent services in the TV bands. These are all positive outcomes.

We also initiated a proceeding to update our Competitive Bidding rules and procedures in advance of the incentive auction. The incentive auction will offer applicants a historic opportunity to acquire substantial amounts of valuable wireless spectrum below 1 GHz. We have proposed comprehensive reforms, that will enable small businesses to compete more effectively in auctions, and sought comment on whether we should do more to deter unjust enrichment.

Collaboration was also important to the Commission adopting, for the first time, location accuracy rules for wireless 9-1-1 calls made from indoor locations. Most consumers believed until recently that when they called 9-1-1 from their cellphones, they would automatically get help just as quickly as when they called from a land line phone. But this is not the case.

To improve the accuracy of wireless 9-1-1 location information, all relevant stakeholders must do their part. In February 2014, we adopted a Further Notice that I believe would have put us on a more efficient path to strong 9-1-1 location accuracy requirements. But I also realize that litigation has prevented the industry from making more strides in this important policy area. So if industry was willing to lead the way on another path towards substantial progress, then I was willing to listen. CTIA, the four nationwide carriers, and APCO and NENA presented a roadmap with commitments to provide more

accurate 9-1-1 location information, earlier than the two-year benchmark originally proposed in the Further Notice. For example, within one year of signing the roadmap agreement, the four nationwide wireless carriers will establish a test bed for 9-1-1 location technologies.

We also continue to make strides towards our goal of universal broadband for all Americans. In 2011, the FCC reformed our universal service and intercarrier compensation programs and put the country on a path to close the broadband gap. We take it for granted now, but this was a significant feat after a decade of good faith efforts faltered, and required us to make difficult decisions. As a result of those reforms, the FCC authorized funding to serve over 630,000 locations, or approximately 1.7 million people, in 45 states plus Puerto Rico with fixed broadband for the first time. We provided mobile coverage to tens of thousands of road miles, and connected over 50,000 people living on Tribal lands with access to mobile broadband. And we are poised to offer incumbent carriers the right to accept funding to deploy broadband within the states they serve very soon. For these Americans, broadband will be life changing.

The FCC also updated the E-rate program to ensure that schools and libraries have the connectivity they need, so that all children and library patrons have access to the best technology and world-class digital learning. The changes will enable additional investment, which not only helps schools, but will have a multiplier effect throughout the wider community. Indeed, we have seen companies do this in smaller, regional markets with significant success.

And we are not done. There are calls for us to adopt a reformed universal service framework for smaller, rate-of-return carriers that serve rural America. It is also time to reboot our only universal service adoption program, which has been frozen in time for three decades. Congress directed the FCC to ensure that all Americans, including low income consumers, have access to advanced telecommunications and information services. Right now, we are falling woefully short of fulfilling this statutory obligation, because our low-income program is limited to support voice-only, which is insufficient when it comes to today's needs.

The FCC's 2012 Lifeline reforms closed long-standing loopholes that have saved consumers a whopping \$2.75 billion – exceeding projections by \$750,000,000. While this is incredibly significant, Lifeline still supports voice only and needs true modernization.

We need a rebooted, recalibrated, totally restructured Lifeline program. Removing the carrier from determining whether a customer is eligible for service or not, would be a giant step toward eliminating incentives for waste, fraud, and abuse. We must ensure that every dollar counts and that we get the most bang for each universal service dollar spent. How will we do that? By mandating minimum service standards a provider must offer to receive Lifeline funding. The program administration process should be streamlined to broaden participation and create more competition. We should eliminate disincentives for innovative carriers to participate and leverage efficiencies from other programs, by creating public-public and public-private partnerships designed to close the broadband adoption gap.

Of all the federal beneficiary programs, from Medicaid, to Supplemental Nutrition Assistance Program (SNAP), to the National School Lunch Program, to public housing, Lifeline has the smallest level of annual expenditures and reaches the greatest number of households of any program except Medicaid. If reformed properly, at \$9.25 a month, Lifeline could once and for all enable consumers to have true broadband and close those chronic digital divides. A truly reformed Lifeline program can prove to be one of the greatest investments this government could make.

Congressional directives to ensure that rates are affordable do not carve out any particular class or consumer. I highlight this because we have fallen woefully short of this obligation, when it comes to inmates, as well as their families, friends, clergy and lawyers. While we may prefer competition over regulation, it is painfully clear that in this area, the market has failed.

A full 10 years after the first petition requesting relief from shamefully high inmate calling fees was filed and ultimately ignored, not only has the market failed to correct itself, things actually have gotten worse. Calls made by deaf or hard of hearing inmates may top \$2.26 per minute. Add to that an endless array of fees: \$3.95 to initiate a call, a fee to set up an account, another fee to close an account, a fee to use a credit card. There is even a fee charged to users to get a refund of their own money.

Fees on top of fees are imposing devastating societal impacts that should concern us all and serve as the motivation for reform. Studies show that having meaningful communication beyond prison walls can make a real difference when it comes to maintaining community ties, promoting rehabilitation and reducing recidivism. Regardless of your views when it comes to inmates and those accused, there are 2.7 million children with at least one parent incarcerated. In addition to the anxiety associated with a parent who is absent on a daily basis, these young people are more likely to do poorly in school and suffer severe economic and personal hardships and all of this is exacerbated by an unreasonable rate regime. Ultimately, the downstream costs of these inequities are borne by us all.

We have had caps on interstate inmate calling rates since February 2014 and despite the parade of horrors that opponents to inmate calling services reform said would flow -- from losing phone service entirely, to security lapses -- we have witnessed nothing of the sort. What we have seen is increased call volumes, ranging from 70% to as high as 300% and letters expressing how this relief has impacted lives. But we are not finished and justice will not be done until intrastate rates (which account for 85% of calls) and ancillary fees are also reformed.

I would be remiss if I didn't mention the item that took center stage at our meeting last month. The tremendous investment and innovation we have seen in this country did not happen organically. Our policies have been key enablers for all of this incredible growth.

The FCC's 2010 Open Internet rules provided clear, simple, basic rules of the road that brought certainty and were responsible for the tremendous levels of development and opportunity we have realized in this nation. The entire ecosystem -- from investors, to innovators, from writers, artists, educators, health care providers, equipment manufacturers, to network providers and last but not least, consumers -- has thrived at record levels. But what is obvious, yet too seldom said, is that the policies and rules which have been in place for nearly a decade, the ones the industry has agreed to follow, are directly responsible for the industry's established course, have proven their effectiveness, and have struck the proper balance.

This is why I am pleased that the FCC responded to the D.C. Circuit's remand and reinstated strong, enforceable rules. But I also respect Congress's desire to evaluate a legislative framework and stand ready to assist to achieve our mutual goal, for a free and open Internet and a thriving ecosystem.

Finally, the progress we are making in implementing the STELA Reauthorization Act of 2014 should be commended. As required under the statute, the FCC has established a working group of technical experts to study and recommend a downloadable security system that can be used in conjunction with navigation devices, such as set-top boxes, to promote greater competition for such devices. The statute requires us to issue a report on this issue by September and the Commission is hard at work to accomplish this milestone.

I appreciate the opportunity to appear before the committee today, and I look forward to answering any questions you may have. Thank you.