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**HEARING BEFORE THE SENATE APPROPRIATIONS SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT**

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Chairman Boozman, Ranking Member Coons, and Members of the Subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the work of the Federal Communications Commission.

Prior to becoming a Commissioner, I had the opportunity to serve on the agency's staff. Every member of my Office has also previously been a Commission staffer. And I have many friends who currently work in the Commission's Bureaus and Offices. There will probably be disagreement over some of the issues that we will discuss today. But I hope that we will be able to agree on one thing: The FCC's staff is filled with talented individuals who are dedicated to serving the American people.

Today, I will focus my remarks on three specific topics: the FCC's Fiscal Year 2016 budget, rural broadband deployment, and recent abuse of the designated entity program.

FY2016 Budget.—Although all Commissioners are asked to vote on a budget proposed by the Chairman that is delivered to the Office of Management and Budget, I have not been asked to participate in the development of the agency's budget request. And after reviewing this proposal, I am unable to support it.

To be sure, this Subcommittee should give the FCC the resources necessary to carry out its core responsibilities. We tackle a wide variety of tasks assigned by Congress, from freeing up more spectrum for mobile broadband to protecting public safety. But in its request, the FCC asks for a 17% increase in its overall budget authority. In all, the Commission is requesting a baseline budget of \$413 million.

That is dramatically higher than it has been at watershed moments in the agency's history. For instance, the agency's baseline budget, after adjusting for inflation, was \$277 million (or 33% less than this budget request) when it faced the monumental task of conducting 80 separate rulemakings to implement the Telecommunications Act of 1996.

At a time when domestic discretionary spending is generally scheduled to remain flat under the current budget caps, I do not believe that this request is fiscally responsible. And at a time when so many Americans in this country are struggling to make ends meet in this stagnant economy (median income is lower now than it was in 2007), federal agencies should be looking for ways to tighten their belts.

For these reasons, I would like to offer three specific suggestions as the Subcommittee crafts the FCC's Fiscal Year 2016 budget. *First*, I do not favor transferring \$25 million from the Universal Service Fund (USF) to the Commission to fund the FCC's work. Wherever possible, money from the USF should be spent across the country to realize the promise of universal access to communications networks, not here in Washington, DC on administrative expenses. Moreover, this \$25 million transfer is a stealth tax increase on the American people.

Second, I do not believe that funds for moving the FCC's headquarters or reorganizing how we use our existing facilities (known internally as "restacking") should be included within the FCC's general budget authority. If these funds are included within our general appropriation amount, it will give many a misleading picture of the Commission's baseline budget and make it harder to reduce that budget when there is no longer the need to spend money on moving expenses. Instead, I believe that Congress should provide us with specific budget authority for this purpose.

Third, Congress should forbid the Commission from using any appropriated funds to implement or enforce the plan the FCC recently adopted to regulate the Internet. The implementation and enforcement of these new rules will not only impose significant burdens on the nation's 4,462 Internet service providers and harm American consumers; they will also consume substantial FCC resources. Whether applying the general "Internet conduct" standard to new business practices, drafting advisory opinions in the Enforcement Bureau, or hiring a new Internet "Ombudsperson," the Commission will expend substantial resources implementing and enforcing regulations that are wasteful and unnecessary, and are already proving harmful to the American public. For example, KWISP Internet, which serves 475 customers in rural northern Illinois, has told the Commission that because of the regulatory uncertainty and costs created by the FCC's decision, it plans to delay network upgrades that would have upgraded customers from 3 Mbps to 20 Mbps service, new tower construction that would have brought service to unserved areas, and capacity upgrades that would reduce congestion for existing customers.

At a time when the FCC is struggling to fulfill many of its core responsibilities under the Communications Act, it is irresponsible for the Commission to spend millions of dollars to regulate the Internet. This Subcommittee is well aware that budgets are finite. Funds spent on diversions like regulating the Internet are funds that can't be spent on critical priorities. Instead of trying to fix something that isn't broken, let's use our limited budget to fix something that *is* broken, such as the Commission's Lifeline program.

Lifeline.—The Lifeline program has a noble purpose. And for about a couple of decades after its inception in 1985, the program was generally free of substantial controversy. During the last Administration, for example, Lifeline grew at an annual rate of just 2.1 percent in real terms. Unfortunately, things quickly changed thereafter.

From the end of 2008 to 2012, the size of the program exploded from \$819 million to \$2.19 billion, an increase of 25.9% a year in real terms. This growth was fueled by substantial fraud and abuse. Phone companies were claiming subsidies for phantom customers or siphoning multiple subsidies for the same person. And some consumers were apparently signing up with every Lifeline company around. A 2013 FCC investigation identified 306 individuals, each of whom had signed up for at least four Lifeline accounts—some actually had 11 accounts in their name!

The good news is that state regulatory commissions took notice, and eventually the FCC did as well. In 2012, the FCC adopted new rules designed to reduce some of the waste, fraud, and abuse of the program. For example, the agency created a National Lifeline Accountability Database to prevent multiple carriers from getting subsidies for the same customer. Those initiatives have proven to be a useful start. For instance, in 2014, the Lifeline cost program \$1.6 billion. This was a drop from 2012—but still *twice* as high as it was in 2008 before the abuse began.

There's much work yet to be done to effect real reform of the Lifeline program.

First, the time has come to put Lifeline on a budget just like we have done for every other program under the Universal Service Fund. It's as true for a federal program as it is for a family: A budget induces careful spending. A Lifeline budget will increase incentives to eliminate fraud and improve accountability within the program. Placing a cap on Lifeline spending will also prevent any future explosion in spending without direct Commission accountability.

Second, we must reduce the financial incentives for people to commit Lifeline fraud. Lifeline was not designed to give people free phone service. It was intended to provide low-income consumers with discounted phone service. And the recent shift to free wireless service plans has dramatically increased the incentive for individuals to break the FCC's rules by signing up for the program more than once.

Most importantly, we need to stop wireless carriers participating in Lifeline from giving away free phone service. Instead, recipients should make some monthly contribution. Requiring some "skin in

the game” would align the Lifeline program with our other universal service programs, each of which requires some contribution by recipients to cut down on waste, fraud, and abuse.

Next, we need to empower the states to police the program. The Lifeline program has historically been a federal-state partnership, with states offering their own funds to supplement the federal program and doing their part to squelch misconduct. Nothing in the law prevents the FCC from clarifying that states are free to take appropriate measures to ensure the integrity of the program.

Third, the FCC must step up its enforcement efforts. Under former Chairman Clyburn and during the first few months of Chairman Wheeler’s tenure, the FCC proposed substantial forfeitures against carriers for allegedly violating our Lifeline rules. But there’s been only scattershot action ever since; as Senator McCaskill put it at a recent hearing, “we’ve had some enforcement, [but] there hasn’t been much in a year.” The waste, fraud, and abuse haven’t stopped—and we shouldn’t either. Now is the time to make fighting Lifeline fraud a priority again.

And *fourth*, there’s been much talk about expanding Lifeline to cover broadband. Before we do that, however, we need to do our due diligence. The Commission has already held a pilot program to test out subsidies for broadband and how that impacts adoption. But we still haven’t seen the results.

Before there’s any discussion of expanding the program to broadband, we have to finish that report and give Commissioners and the American public a meaningful opportunity to study it and provide their feedback. After all, the most definitive study of broadband adoption to date suggests that two thirds of non-adopters wouldn’t subscribe to broadband *at any price*. So we need to be cautious about expanding the Lifeline program and make sure we’re really getting a bang for the taxpayer’s buck.

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

We at the FCC need to take this promise seriously. We must recognize that broadband operators in rural America today face unique challenges. Unlike the urban environment, rural carriers must carefully plan their infrastructure over a ten- or twenty-year time scale if they are to recover their costs. Congress recognized this reality in section 254 of the Act, embedding the statutory command that universal service support be “predictable.”

The good news is that in 2011, the Commission fundamentally reoriented the Universal Service Fund to support broadband, rather than just telephone service. It also set a budget for the high-cost fund and laid out the steps that were needed to move forward with implementation.

The bad news is that we’re behind schedule. The *Universal Service Transformation Order* promised to start distributing support through the Connect America Fund Phase II, the Mobility Fund Phase II, and the Remote Areas Fund in 2013. But only last month did we finally make our state-level offers to price-cap carriers, and this means merely that we’ve gotten through Part 1 of the CAF Phase II process. We still need to establish the rules for Part 2—competitive bidding—and the timeframe for doing that is uncertain. We’re even further behind when it comes to the Mobility Fund Phase II and the Remote Areas Fund.

We’re also behind when it comes to fixing known problems with the Universal Service Fund. A good example of this is the stand-alone broadband problem. Through a quirk of regulatory history, our rules offer universal service support to carriers that build out broadband, but only when they bundle their broadband services with traditional telephone lines. That system has increasingly come under strain as consumers flee landlines in favor of wireless and Internet-based alternatives. Indeed, it has put some carriers to a Hobson’s choice. Either they offer stand-alone broadband—which urban consumers have

and rural consumers want—and lose universal service support, or they deny consumers a broadband option and risk the customer dropping service altogether. Perversely, it’s more profitable for some carriers to lose a customer entirely than retain him or her as a stand-alone broadband customer. The net result is that rural carriers hold back investment because they are unsure if they can deploy the services that consumers are demanding.

A stand-alone broadband funding mechanism would correct this vestige of our outdated rules. I was pleased last June that my colleagues agreed with my suggestion to propose such a mechanism for rate-of-return carriers serving the highest-cost reaches of our country. It would give consumers a real option of choosing whether they want to purchase broadband and telephone service from the same company. It would give carriers more assurance that legacy regulations won’t prevent them from responding to consumer demand, thus increasing broadband deployment. And it could be done within the existing budget, something everyone with a phone line can celebrate. We need to live up to our commitment to get this done by the end of the year.

The to-do list regarding the Universal Service Fund goes even further. We should implement the 100% overlap rule to ensure that universal service funds are targeted to unserved areas rather than where the private sector has already deployed. We should commence a rulemaking to deal with the unique challenges of rural broadband deployment in Alaska. We should move forward with a voluntary path to model-based support for interested rate-of-return carriers. We should stop spending universal service funds to increase rural telephone rates and get rid of the “rate floor” that penalizes rural areas but not big cities like Washington, DC. And more.

To be clear, none of this is meant as criticism of our hard-working staff. Deputy Chief of the Wireline Competition Bureau Carol Matthey and the members of the Telecommunications Access Policy Division have done yeoman’s work over the past several years, modelling the costs of deploying a next-generation network, sifting through complicated waiver petitions, and poring over countless competing claims that a particular census block is served by broadband (or not). They represent the best of public service.

Instead, I believe that the Commission has embraced the wrong priorities. Rather than focusing for the last year on adopting Internet regulation—a solution that won’t work to a problem that doesn’t exist—we should have concentrated on ensuring that we have truly universal broadband deployment. Digital opportunity for millions of Americans hangs on our decisions on rural broadband. Even if their plight doesn’t grab headlines, we have a responsibility to hear them. I believe that no part of rural America should miss the broadband revolution while waiting for the regulatory dust to settle. And so I hope the Commission—not just the staff, but the full Commission—will be moving forward soon on all these fronts to facilitate more rural broadband.

DE Program.—The FCC must take immediate action to end abuse of the designated entity program. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants.

Here’s how the program was supposed to work. When Congress first granted the FCC auction authority in 1993, its goal was to help small businesses—“designated entities” in FCC parlance—compete for spectrum licenses with large, established companies. A small business that lacked the funding to outspend a large corporation could bid, say, \$100,000 for a license but end up paying only \$75,000. In effect, a federal subsidy would cover the remaining \$25,000.

Perversely, this well-intentioned program now helps Goliath at David’s expense. Small business discounts are now being used to give billions of dollars in taxpayer-funded subsidies to Fortune 500 companies and to make it harder for legitimate small businesses to compete in the wireless market. A bipartisan, bicameral chorus in Congress has raised concerns about this state of affairs. And the public is taking notice as well. For instance, Americans for Tax Reform, the Communications Workers of

America, and the NAACP have all pointed out that big businesses are now abusing the program and driving out legitimate small and minority-owned businesses.

The FCC's recent AWS-3 spectrum auction is a shocking case in point. Earlier this year, the FCC disclosed that two companies, each of which claimed it was a "very small business" with less than \$15 million in revenues, together won over \$13 billion in spectrum licenses and are now claiming over \$3 billion in taxpayer-funded discounts. How could this be? DISH Network Corp. has an 85% ownership stake in each (not to mention highly intricate contractual controls over each). Allowing DISH, which has annual revenues of approximately \$14 billion and a market capitalization of over \$31 billion, to obtain over \$3 billion in taxpayer-funded discounts makes a mockery of the small business program. Indeed, DISH has now disclosed that it made approximately \$8.504 billion in loans and \$1.274 billion in equity contributions to those two companies—hardly a sign that they were small businesses that lacked access to deep pockets.

I am appalled that a corporate giant has attempted to use small business discounts to box out the very companies that Congress intended the program to benefit and to rip off American taxpayers to the tune of \$3.3 billion. This is money that otherwise would have been deposited into the U.S. Treasury. This is money that could be used to fund 581,475 Pell Grants, pay for the school lunches of 6,317,512 children for an entire school year, or extend tax credits for the hiring of 138,827 veterans for the next 10 years. As appropriators, you know that *this is real money*.

And it is certainly not too late to ensure that the Treasury gets it. The DISH entities' applications are pending before the FCC. If it turns out that DISH did not comply with the FCC's rules, the agency must deny them these discounts. The American people deserve no less.

DISH's abuse of the program during the AWS-3 auction also had an enormously negative impact on real small businesses. Small, rural operators throughout our country recently explained that the DE program is having a "devastating impact" on their ability to obtain spectrum and compete. Here are just a few examples:

- Rainbow Telecommunications Association, Inc. (0.098% of DISH's size) provides communications services to rural parts of Kansas. Rainbow was the provisionally winning bidder for one license that would have allowed it to serve parts of Kansas, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction.
- Pioneer Telephone Cooperative, Inc. (0.107% of DISH's size) serves rural parts of Oklahoma. Although Pioneer won three licenses in Oklahoma and Kansas, it was outbid by a DISH entity claiming a taxpayer subsidy for another license that it could have used to serve other parts of Oklahoma.
- Geneseo Communications Services, Inc. (0.112% of DISH's size) serves rural parts of Illinois. Although Geneseo won two licenses in Illinois, it was outbid by DISH entities claiming taxpayer subsidies for four other licenses that Geneseo could have used to serve different parts of Illinois.

In every one of these cases, the small businesses that the DISH entities outbid either claimed no taxpayer-funded discounts or ones that were smaller than those claimed by DISH.

These examples are just a small part of a much broader story. There were over 440 licenses in the auction for which the DISH entities outbid smaller companies or ones that were not providers of nationwide service that had been winning the licenses. That's more than *three times* as often as those providers were outbid by AT&T, Verizon, and T-Mobile combined.

The FCC must take action to ensure that this abuse never happens again. We took the first step last month with a public notice that tees up a wide range of proposals that, if adopted, would end this

corporate welfare. I want to thank my colleagues for accommodating my request that we put all options on the table—including strictly limiting how much large companies can invest in a designated entity, capping the taxpayer subsidy that any designated entity can obtain during an auction, prohibiting coordinated bidding, and fundamentally revising our attribution rules.

If we are going to heed the lessons of the AWS-3 auction, the work cannot end there. I look forward to working with my fellow Commissioners and Congress to ensure that we implement fundamental reforms to the program. We must have a singular focus in this proceeding: We must close any loopholes that could allow big business to rip off the American taxpayer, not create new avenues for abuse, as the FCC proposed last year over my dissent. And if, in the face of recent experience, the FCC does not follow through to crack down on abuse of the designated entity program, then Congress must act.

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Chairman Boozman, Ranking Member Coons, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and working with you and your staffs in the days ahead.