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NOMINATIONS TO THE DEPARTMENT OF TRANSPORTATION, DEPARTMENT OF COMMERCE, THE FEDERAL COMMUNICATIONS COMMISSION, AND THE FEDERAL TRADE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

DECEMBER 4, 2012

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ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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NOMINATIONS TO THE DEPARTMENT OF TRANSPORTATION, DEPARTMENT OF COMMERCE, THE FEDERAL COMMUNICATIONS COMMISSION, AND THE FEDERAL TRADE COMMISSION

TUESDAY, DECEMBER 4, 2012

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

The Committee met, pursuant to notice, at 2:33 p.m., in room SR–253, Russell Senate Office Building, Hon. John F. Kerry, presiding.

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

Senator KERRY. This hearing will come to order. Thank you all very much. Welcome.

Senator Rockefeller is not feeling well today; he's not here. He was here for the vote, but he didn't—he's not staying for the day. And so, I'm going to open this hearing, and then I think Senator Boxer is going to chair the better part of it after we have opened.

But, we have a number of important nominees here today:

Polly Trottenberg is the nominee for Under Secretary of Transportation for Policy, and she is very familiar to many of us here on the Committee because of her current role at the agency, but also 12 years of valuable service for Senators Boxer, Schumer, and Moynihan. And as Under Secretary, she'd be responsible for implementation of the recently passed bipartisan surface transportation bill, the MAP–21.

Dr. Mark Doms is the nominee for Under Secretary for Economic Affairs at the Department of Commerce, and, in that capacity, he'd have to manage the statistical agencies in the Department, as well as the private—provide economic analysis for the Secretary and for the administration.

Our other two nominees are pursuing confirmation for posts at the Federal Communications Commission and the Federal Trade Commission, and they are extremely important consumer protection and competition agencies—— competition/protection, I guess is the way to say it. Their capacity and their effectiveness is, obviously, essential to all of the goals of this committee and the Congress.

Let me just say, quickly, that FTC investigations and settlement negotiations have, unfortunately, become poorly kept secrets. And

I want to note, for the nominees, that neither the commissioners nor the businesses subject to their jurisdiction can do their jobs well if their deliberations or investigations are manipulated or leaked for strategic advantage. I don't think anybody is well served by that, frankly. It would be good to see more bipartisanship at both the FTC and the FCC, and greater efforts at collaboration, frankly. I think that Congress's intent, and the people's interests, would be well served if that were so.

There also will be no certainty for the markets if you can't bridge the ideological divide in order to establish a well-understood, easily adhered to, effective, and accepted body of law and regulation governing competition and consumer protection in the Digital Age that we now live in. So, I hope the nominees here today will help us—will be committed to help us move forward and achieve that place of common sense.

Commissioner Clyburn is seeking reappointment to the FCC. And she has done a superb job since joining the Commission and helping the Chairman to move along important policies, helping the country lead to wireless communications and broadband deployment and adoption, which is critical to our nation, and we've fallen behind on that. She's also become a critical voice in trying to reform the unfair pricing schemes that lead people to prison, having to pay dramatically more money than the rest of the population to make a long-distance phone call. It's, frankly, obscene, and we certainly salute her work on that.

Mr. Wright is nominated to serve at the FTC. As a conservative scholar and occasional blogger, he has injected ideas on antitrust into the public domain, and this committee will look forward to exploring those. His work is widely read and well-respected.

If confirmed, Ms. Clyburn and Mr. Wright will have to decide how best to apply our laws on consumer protection, competition, telecommunications to the new business models, firms, and services that the Internet has enabled.

So, that's a very significant, intellectually challenging task, and I know every member of the Committee looks forward to exploring with our nominees what their thoughts are on these areas that are so important to our economy and to the preservation of certain rights for people.

The Ranking Member, Senator Hutchison.

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

Senator HUTCHISON. Well, thank you very much, Senator Kerry, for agreeing to chair this hearing. And I'm very pleased that we are moving forward with some of these nominations. Now that the elections have occurred, I think having these agencies and boards and commissions, with their membership, if they are approved, to be able to go forward expeditiously is a good idea.

I want to say that Dr. Mark Doms, who has been nominated for Under Secretary of Commerce for Economic Affairs, would make him the chief economist, where he actually is there at the Department of Commerce now doing that job, with a long career in economics, which is very important, and I think he will be confirmed very quickly.

It is crucial that we have leadership in place at the Department of Commerce to focus on promoting business and creating jobs and growing our economy. Also, I would hope that the Census, which will occur in—probably 8 years from now—needs to begin to have a model of planning so that it will be as efficient and effective as possible.

The Department of Transportation, the Acting Under Secretary, Polly Trottenberg, is nominated for the permanent position. And DOT certainly has many issues before it, and I know that the surface reauthorization legislation that was enacted this year has some issues that I would hope to hear how it's going to implement those issues. And this committee has been particularly active in opposing the European Union's unilateral emissions trading scheme. The bill emanated out of this committee, and has been signed by the President, so I think a report on that would be something I would be interested in hearing.

Commissioner Clyburn has been before our committee before and is back up for reappointment. And her commitment to serve underutilized rural areas is something that she said she wanted to do when she was first appointed, and I will look forward to hearing her progress on that.

And then, the Federal Trade Commission, Dr. Joshua Wright has a great background for this. He, too, is an economist—he would be the only one on that Commission, if he's confirmed—and he does have a distinguished record of teaching at prestigious institutions, including my alma mater, the University of Texas. And so, I hope that we can hear from him about how he sees the approach of the FTC, if he is confirmed as a member.

With that, Mr. Chairman, I would like to proceed to hearing from either the missing Senator Schumer or having the nominees come forward.

Senator KERRY. Well, Senator Schumer is good at speaking under all circumstances, but not being there, for him even, is hard. So——

[Laughter.]

Senator KERRY.—we're going to have to wait. I am—I've just received notice, he's not going to be here until 3 o'clock, so we're going to proceed. But, Senator Boxer, I know, wants to make an introduction. Senator DeMint, I believe, wants to make an introduction.

What I would ask is for the nominees to come up to the table, and when Senator Schumer gets here, we'll ask him to speak from the dais and make his comments.

Let me just say, to all our colleagues on the Committee, and all the staff, and for those of you here visiting, I think this will probably be Senator Hutchison's last hearing as a member of the Committee, and in the Senate on this committee. So, I would like to personally acknowledge her tremendous contributions. She's been a terrific colleague on the other side of the aisle, always open to listening and working with us on a lot of different projects. We are going to miss her on this committee, and the Senate, indeed, and wish her well in whatever endeavor she undertakes, back there in that small state of Texas.

[Laughter.]

Senator KERRY. But, we—honestly, we are really grateful for your service, Kay, and wish you well. Everybody here on the Committee joins me, I know, in saying that to you. Thank you.

Senator HUTCHISON. No, thank you for——

[Applause.]

Senator HUTCHISON. Thank you.

Well, as the nominees are coming forward—please do come forward——

Senator KERRY. Come on up, nominees. Come on up.

Senator HUTCHISON.—and I will just say thank you, from my colleagues. I've loved this committee. It was my first choice when I got into the Senate, and I've loved serving as Ranking Member and working with Senator Rockefeller, with all of you. I think we've achieved, really, maybe the most successful amount of legislation of any committee in the last 2 years. And I think we've made great, productive moves. I hope, Senator Kerry, that you will pass our infrastructure legislation when I'm gone.

Senator KERRY. I've got to find—Senator Thune, you gonna pick up that cudgel when you——

[Laughter.]

Senator HUTCHISON. That's right. And I really look forward to——

Senator KERRY. Thank you.

Senator HUTCHISON.—seeing all of you when I am a happy camper and you all are still here in the fights.

Senator BOXER. Senator Kerry?

Senator KERRY. Senator Boxer.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Senator Kerry, I want to join you in your tribute to Senator Hutchison.

And I have to say—and I know that Maria Cantwell and Amy Klobuchar will back me up on this—that, you know, having her in the Senate—the women have a special bond right now—and I guess we'll continue to do that until we're 50–50—because there's just not that many of us. Even now, we're going to 20, which is huge. But, I think many people don't know the close relationship that the women Senators have. And I would just point to the special relationship that developed between Senator Mikulski and Senator Hutchison, and their work in keeping us together and having bipartisan meetings and dinners and so on. And, more than that, working together on legislation.

And I guess—I've put an extensive statement in the record about my colleague——

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Thank you, Mr. Chairman, for holding this hearing to consider nominees for key positions at the Department of Transportation, Department of Commerce, Federal Communications Commission, and Federal Trade Commission.

I look forward to hearing from all of the nominees, but would like to say a few words about two who are particularly near and dear to me.

First of all, I am delighted to welcome Ms. Polly Trottenberg, the nominee for Under Secretary of Transportation for Policy at the U.S. Department of Transportation.

Polly was my Deputy Chief of Staff and Legislative Director from 2006 to 2008, so I can personally attest to her incredible leadership abilities and commitment to public service.

She is smart, charismatic, and dedicated—and the DOT is fortunate to have such a talented individual at the helm of its policy team.

Polly joined the DOT in August 2009 as Assistant Secretary for Transportation Policy, and became the Acting Under Secretary last November.

Polly's accomplishments so far include overseeing the allocation of $3.1 billion through the incredibly successful and popular TIGER (Transportation Investment Generating Economic Recovery) discretionary grant program, highlighting her ability to manage complex, nationally significant programs.

In her current role, Polly has been coordinating implementation of the transportation reauthorization bill, *Moving Ahead for Progress in the 21st Century (MAP–21),* in close coordination with regional, state, and local transportation authorities.

She will play a role as DOT implements many of the critical reforms included in MAP–21, such as the nearly ten-fold expansion of the TIFIA (*Transportation Infrastructure Finance and Innovation Act*) loan program and a new Federal focus on improving freight movement.

I am confident that Polly's extensive prior experience working on transportation policy will allow her to continue making valuable contributions to the DOT:

She was Executive Director of Building America's Future from 2008 to 2009.

She served as a top aide in the Senate for 12 years, not only in my office but also working for Senator Chuck Schumer and the late Senator Daniel Patrick Moynihan.

And she previously worked at the Port Authority of New York and New Jersey as well as the Massachusetts Port Authority.

I am delighted that President Obama has selected Polly for this important position, and look forward to working with my colleagues in the Senate to advance her nomination swiftly.

I would also like to offer my enthusiastic support for the nomination of Congresswoman Yvonne Burke to the Amtrak Board of Directors. Ms. Burke is not testifying today, but I would like to say a few words about her.

Congresswoman Burke has 30 years of experience as a public official representing the Los Angeles area, and will bring a wealth of knowledge to this position about the transportation challenges facing communities across our Nation.

Her experience includes:

6 years in the California State Assembly,

6 years representing the 37th District of California in the U.S. House of Representatives, and

17 years on the Los Angeles County Board of Supervisors.

She is particularly well known for her work involving infrastructure, economic development, the environment, and children and families.

She has held numerous other distinguished positions, including serving on the California State Transportation Commission, the Board of Directors of the House Committee on Congressional Ethics, and the California Board of Regents.

I am confident that Congresswoman Burke will make a valuable addition to the Board, and will provide unique insights into ways Amtrak can better serve communities across our Nation.

I look forward to hearing from all of the nominees today.

Thank you.

Senator BOXER.—but, I do want to say, unequivocally, as far—from my perch, here, we never would have done the FAA bill without you. We wouldn't have dislodged it without you and your persistence. And we wouldn't have gotten the highway bill done; even though it's a different committee, this committee had a lot of jurisdiction in there.

So, I just—I mean, that's millions of jobs, and I just think you have a wonderful legacy, and Texas is lucky. If you go back there full-time, they're lucky to have you, and we will miss you.

I have a statement I'd like to make about two nominees. I'll withhold, if anybody wants to add to the tribute to our colleague, if——

Senator HUTCHISON. Oh, I don't want to take——

Senator BOXER. Well, it's——

Senator HUTCHISON.—everyone's time.

Senator BOXER.—it's worth it.

Senator HUTCHISON. Really. No, it's not.

[Laughter.]

Senator BOXER. Well, I think——

Senator HUTCHISON. I really appreciate it, but——

Senator KERRY. That's why we're going——

Senator HUTCHISON.—thank you.

Senator KERRY.—to miss her, folks.

[Laughter.]

Senator HUTCHISON. Let's deem that the great statements are made, and get these nominees——

Senator CANTWELL. No, no, Mr. Chairman, if I could just——

Senator KERRY. Yes, Senator Cantwell.

Senator CANTWELL.—chime in.

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

And I know that—I know my colleague doesn't want us to, but we—and we had a chance at the—one of our last hearings, to bring this up. But, Senator Boxer brings up such an important point, and that is to always—for us to recognize the great contribution that you and Senator Mikulski made to being pioneers in this institution, and the fact that, not only did you take time to do that, but you took time to bring all of us together, to help us along the way.

And her second point, as somebody who comes from an aviation state with over 150,000 aviation jobs, the fact that getting the aviation bill was critically important to our state, and thank you for your help in support of that.

I never thought that the issue of slots could be so contentious——

[Laughter.]

Senator CANTWELL.—and so germane and mundane at the same time. And I appreciate you weighing through what was a very tough issue for many people.

And so, your leadership will be missed, to say nothing that you got Senator Mikulski to a rodeo. I—we're still looking for the pictures of that.

[Laughter.]

Senator HUTCHISON. Oh, they were great.

Senator CANTWELL. And we certainly hope you won't be a stranger here.

Thank you.

Senator HUTCHISON. Thank you very much.

Thank you.

Senator KERRY. Thank you all very much.

Senator Thune.

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Well, Mr. Chairman, as long as we're on the subject, my colleague from Texas is someone who has been very focused on getting things done and getting results, and I think that is a lesson all of us can learn in the challenges that we're going to face ahead. But, she really has been very effective for her state, very effective for her country, because of that focus. And that means working with people who have different points of view and perspectives, but I think it has served her extremely well and allowed this committee to get some things done that perhaps otherwise would not have been done. And so, she will be greatly missed. And there are some of us who will try and fill those big shoes, or big pumps, or whatever the case may be——

[Laughter.]

Senator THUNE.—but, we appreciate her great service here, and we'll miss her contributions, not only on our side of the aisle, but, I know, as has already been expressed, by members on the other side.

So, Senator, we know you're going to do great things in Texas, but we'll miss you around here.

Senator HUTCHISON. Well, thank you all so much.

Thank you.

Senator KERRY. Well, can I say, as we close it out and I'm opening it up——

[Laughter.]

Senator KERRY.—it's a long way from that seat, down there. You and I have both journeyed from the last seat——

Senator HUTCHISON. Right.

Senator KERRY.—up to there. And so, you know, you—a couple of minutes here is not so bad.

Senator HUTCHISON. Well, thank you.

Senator KERRY. You're owed that, at least.

Senator BOXER. You can take it.

[Laughter.]

Senator HUTCHISON. We've had a couple.

Senator KERRY. OK.

Senator BOXER. Now, can I talk to colleagues——

Senator KERRY. Let me just say, to all the members of the Committee, that Senator Rockefeller is planning to mark up these nominees, hopefully next week. And so, obviously, with the press of business, we want to get this done. So, the Committee is requesting members submit any questions for the record within the next 24 hours, and it'll be closed out at that point.

So, with that said——

Senator BOXER. Mr. Chairman, I was told I could say——

Senator KERRY. Yes——

Senator BOXER.—a couple of minutes——

Senator KERRY.—absolutely. We said you could——

Senator BOXER.—just 2—I'll put my whole statement in the record.

But, I want to just say how proud I am that Polly Trottenberg is here, the nominee for Under Secretary of Transportation for Policy at the U.S. Department of Transportation. She's near and dear

to my heart because she was my Deputy Chief of Staff and Legislative Director, and I can personally attest to her incredible leadership abilities. She also—she got great training from the great Senator Moynihan and then the great Senator Schumer, who will be here shortly and will be unable to speak—won't that be interesting.

[Laughter.]

Senator BOXER. And I just want to say that Polly joined DOT in 2009. I was upset to lose her. But, she's been incredible—and I won't go into everything; I'll put it in the record—but, the TIGER Grant program that she—it's been very, very bipartisan and very, very important to the country, and she's cut through that issue. She—when we passed our bipartisan transportation bill, MAP–21, she's been working, literally, night and day to get it going, because we need those jobs. And I just know that—after we have a chance to hear from her, and look at her record—I just know she'll sail through.

And lastly, Yvonne Braithwaite Burke, who some of you may know—she's a very important figure in California—she has 30 years of experience as a public official, representing Los Angeles—6 years in the State Assembly; 6 years, the 37th District in the U.S. House; 17 years on the L.A. Board of Supervisors—very well known for her work. She's a distinguished nominee.

So, these two are near and dear to my heart. I'm sure the others are wonderful; I just know these two so well, and I wanted to get the chance to put the statement in the record.

Thank you.

Senator KERRY. Thank you very much, Senator Boxer.

So, now, Ms. Trottenberg, is it—now that you've been so pumped up, you're going to lead off.

Ms. TROTTENBERG. Thank you.

Senator KERRY. So, we'll listen to you, and then we'll just run right down the line.

Ms. TROTTENBERG. OK, thank you.

Senator KERRY. Thank you very much.

STATEMENT OF HON. POLLY E. TROTTENBERG, NOMINEE TO BE UNDER SECRETARY OF TRANSPORTATION FOR POLICY, DEPARTMENT OF TRANSPORTATION

Ms. TROTTENBERG. Thank you, Senator Kerry and Ranking Member Hutchison—you will be missed by many of us at DOT, as well—members of the Committee. It's a privilege to appear before you today as President Obama's nominee for Under Secretary of Transportation for Policy. I'm honored by this nomination and the opportunity to serve our nation. And I'm grateful to Secretary Ray LaHood for his leadership and support.

I'd like to just quickly introduce my family—my husband, Mark Zuckerman; my stepdaughter, Naomi; my stepson, Noah; my niece, Mallory; my sister-in-law, Suzanne; and my nephew, Sam. I'd also like to gratefully acknowledge the friends and colleagues who are here today.

As Senator Boxer mentioned, I've served as Assistant Secretary for Policy since July 2009, and I've been the Acting Under Secretary for the past year. Prior to arriving at DOT, I did spend the majority of my career in the U.S. Senate. As Senator Kerry men-

tioned, I've had the honor of working for Senator Boxer, Senator Schumer, and the late Daniel Patrick Moynihan.

And thank you, Senator Boxer, for your kind remarks.

I served as Executive Director of Building America's Future, a bipartisan group of State and local elected officials that work to promote infrastructure investment, and I also worked at both the Massachusetts Port Authority and the Port Authority of New York and New Jersey, and I got a firsthand look at the challenges that some of our nation's busiest ports and airports face.

In my current role at DOT, I have responsibility for overseeing the Department's surface and aviation policy efforts, with a focus on our strategic goals: safety, number one; state of good repair; economic competitiveness; livability; and environmental sustainability. And, as Senator Boxer mentioned, the policy office is currently coordinating the Department's implementation of MAP–21. I'd like to thank this committee for its work on the bill, especially in the area of safety. And, of course, I would like to thank my former boss, Senator Boxer, for her leadership in working with Senator Inhofe to help get that bill through Congress. We're very appreciative at USDOT.

We've worked very diligently from the moment the bill passed, throughout the summer and the fall, to provide State DOTs, transit agencies, and metropolitan planning organizations with the timely guidance they needed on MAP–21's many new funding and programmatic provisions, starting, just a few weeks after the passage of the bill, with getting the information out on the TIFIA program; and we've had a big response on that.

To oversee implementation of MAP–21's freight provisions, working with Senator Cantwell, we announced, this summer, a Freight Policy Council. The council is bringing together, within the Department, our senior leadership, our policy, economic, safety, and research experts, to oversee our freight policy work, including the development of the National Freight Strategic Plan, which was required in MAP–21.

The policy office also works with the—has been working with all the other surface modes and stakeholder groups to implement the new performance measure requirements in MAP–21, which will ultimately empower State DOTs, transit agencies, MPOs, elected officials, and the public, to make more informed and cost-effective transportation investment decisions. And I'd like to particularly note Senator Warner, Senator Lautenberg, and Senator Rockefeller, who have been big leaders on the issue of performance measures.

Prior to MAP–21, our policy office led the Department's efforts to develop our own surface transportation proposal. We're grateful that Congress adopted some of our recommendations, and we're hoping that our implementation of MAP–21 will teach us many lessons and help shape our collective vision for the next surface transportation bill.

On the aviation side, the policy office works with the FAA to focus on our number one priority—safety—and on the implementation of NextGen, which I know is a big concern to many on this committee. We also work to promote the global competitiveness of U.S. air carriers and ensure that small and rural communities

have access to air travel through the Essential Air Service program.

Finally, as Senator Boxer noted, my office has overseen four rounds of competition through the TIGER Discretionary Grant program. We've awarded 3.1 billion to 218 transportation projects all across the country. We've leveraged tens of billions of dollars in additional public and private funding, and put thousands of Americans to work.

In conclusion, if confirmed, I pledge to continue our work with Congress and the transportation community to create a safer, more efficient, and performance-based system that serves our citizens and their communities while creating jobs and economic opportunities.

I thank the Committee for its consideration, and would be happy to answer questions.

[The prepared statement and biographical information of Ms. Trottenberg follow:]

PREPARED STATEMENT OF HON. POLLY E. TROTTENBERG, ACTING UNDER SECRETARY OF TRANSPORTATION FOR POLICY, DEPARTMENT OF TRANSPORTATION

Thank you Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee. It is a privilege to appear before you today as President Obama's nominee for Under Secretary of Transportation for Policy.

I am honored by this nomination and the opportunity to serve our nation and the Administration. And I am grateful to Secretary Ray LaHood for his leadership and support.

I would like to introduce my family—my husband Mark Zuckerman, my stepdaughter Naomi, my stepson Noah, my niece Mallory, my sister-in-law Suzanne Pillsbury, and my nephew Sam Trottenberg. I would also like to gratefully acknowledge the friends and colleagues who are here today.

I have been honored to serve as Assistant Secretary for Transportation Policy since July of 2009 and as Acting Under Secretary of Transportation for Policy for the last year.

Prior to arriving at DOT, I spent the majority of my career helping shape transportation policy in the U.S. Senate. In my 12 years serving here, I had the honor of working for Senators Barbara Boxer, Charles Schumer, and the late Daniel Patrick Moynihan.

I served as Executive Director of Building America's Future, a bipartisan coalition of state and local elected officials chaired by former Governor Rendell, former Governor Schwarzenegger and Mayor Bloomberg, which seeks to promote infrastructure investment. I also worked at both the Massachusetts Port Authority and the Port Authority of New York and New Jersey, where I learned firsthand about the challenges some of our Nation's busiest ports and airports face.

In my current role at DOT, I have the responsibility of overseeing the Department's surface and aviation policy efforts in several major areas, with a focus on our key strategic goals: safety, state of good repair, economic competitiveness, livability and environmental sustainability.

The Policy Office is currently coordinating the Department's implementation of the new bipartisan surface transportation legislation, MAP–21. I would like to thank this Committee for its work on the bill, especially in the area of safety, which is the Department's highest goal. In addition, I would like to thank my former boss Senator Boxer, for her leadership in moving this bipartisan legislation through Congress.

We have worked diligently to provide State DOTs, transit agencies and MPOs with timely guidance on MAP–21's many new funding and programmatic provisions, starting this summer with a greatly expanded TIFIA loan program. We have also worked hard to provide the public and transportation stakeholders with many opportunities to engage and have input into this process.

To oversee the implementation of MAP–21's freight provisions, working with Senator Cantwell, DOT recently created a Freight Policy Council. The Council brings together senior leadership, as well as policy, economic, safety and research experts—

to oversee the Department's freight policy work, including development of the National Freight Strategic Plan, as required by MAP–21.

The Policy Office is also working with the surface modes and stakeholder groups across the country to implement the new performance measure and performance-based planning requirements in MAP–21. We believe these important provisions will ultimately empower State DOTs, transit agencies, MPOs, elected officials and the public to make more informed and cost-effective transportation investment decisions. I would like to thank you, Mr. Chairman, and Senators Lautenberg and Warner, for your leadership in the area of performance measurement.

Prior to MAP–21, the Policy Office led the Department's cross-modal efforts to develop the Administration's surface transportation proposal. We are grateful that Congress adopted many of our recommendations. We expect that our MAP–21implementation efforts will teach us many lessons and help shape our collective vision for the next surface transportation bill.

On the aviation side, the Policy Office works with FAA to focus on our number one priority, safety, and on the modernization of the air traffic control system through the implementation of NextGen. We are also working to promote the global competitiveness of U.S. air carriers and ensure that small and rural communities in this country have access to the national air transportation system through the Essential Air Service program.

Finally, my office has also overseen four rounds of competition through the TIGER Discretionary Grant Program. We have awarded $3.1 billion to 218 transportation projects all across the country, leveraged tens of billions of dollars in additional public and private funding, and put thousands of Americans to work.

By applying principles of cost benefit analysis, performance measurement and innovative project delivery, DOT has funded projects with strong partnerships, accelerated schedules, and demonstrative benefits for the traveling public, their communities, and the Nation. TIGER provided the Department with valuable lessons in innovative, multimodal project selection and we continue to work with the TIGER grantees to track their performance and long-term outcomes.

In conclusion, if confirmed, I pledge to continue our work with Congress and the transportation community to create a safer, more efficient, performance-based and multimodal transportation system that serves our citizens and their communities while creating jobs and economic opportunities.

I thank the Committee for its consideration of my nomination and would be happy to respond to your questions.

A. BIOGRAPHICAL INFORMATION

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

2. Position to which nominated: Under Secretary of Transportation for Policy, Department of Transportation.

3. Date of Nomination: June 20, 2012.

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

Residence: Information not released to the public.

Office: U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20950.

5. Date and Place of Birth: March 16, 1964; Boston, MA.

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

Mark Zuckerman, Deputy Assistant to the President and Deputy Director of the Domestic Policy Council, The White House, 1600 Pennsylvania Ave. NW, Washington, DC 20500; children: Naomi Zuckerman, age 22; Noah Zuckerman, age 17.

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

BA in History, Barnard College, Columbia University, May 1986.

Masters in Public Policy, Kennedy School of Government, Harvard University, June 1992

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

U.S. Department of Transportation, Acting Under Secretary of Transportation for Policy and Assistant Secretary of Transportation Policy, Washington, D.C., July 2009 to present (managerial, related).

Building America's Future, Executive Director, Washington, D.C., Aug. 2008–July 2009 (managerial, related).

Senator Barbara Boxer, Deputy Chief of Staff and Legislative Director, Washington, D.C., Jan. 2006–July 2008 (managerial, related).

Senator Charles E. Schumer, Legislative Director, Washington, D.C., Jan. 1999–Dec. 2005 (managerial, related).

Senator Daniel Patrick Moynihan, Legislative Assistant for Transportation, Public Works, and Environment, Washington, D.C., Oct. 1996–Dec. 1998 (non-managerial, related).

Port Authority of New York & New Jersey, New York, NY, Senior Executive Assistant to the Director of Aviation and Executive Assistant to the Executive Director, Oct. 1994–Sept. 1996 (non-managerial, related)

Massachusetts State Senate, Boston, MA, Policy Analyst, Joint Committee on Commerce and Labor, State Senator Lois Pines, Chair, June 1992–Sept. 1994 (non-managerial, related).

Massachusetts Port Authority, Boston, MA, Research Associate, Department of Administration and Finance, Summer 1991 (nonmanagerial, related).

Perry Davis Associates, New York, NY, Research Director, March 1988–April 1990 (non-managerial).

Freelance Writer and Editor, New York, NY and Chicago, IL, September 1986–February 1988 (non-managerial).

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

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

Ex Officio Member and Chair (March 2010—March 2011) of the U.S. Access Board, July 2009 to present.

First Vice Chair, Northeast Corridor Infrastructure and Operations Advisory Commission, Jan. 2012 to present.

Ex Officio Member, Transportation Research Board Executive Committee, July 2009 to present.

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

Working World TV, Founding Member, Feb. 2005–Oct. 2007.

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

Women's Transportation Seminar (WTS) Sept. 2008 to present
WTS does not restrict membership.

Women's Leadership Network Sept. 2008–Nov. 2009
WLN restricts membership based on sex.

Barnard in Washington Club Oct. 1996 to present
Barnard in Washington Club, is an alumni association for Barnard College, a private women's college, and as such, restricts membership based on sex.

The Road Gang March January 2009 to present
The Road Gang does not restrict membership.

Member of the Economic Policy Institute's Transportation Infrastructure Research Project Advisory Committee Sept. 2008–July 2009 (est.) EPI does not restrict membership.

Member of the America 2050 "Visualizing a 21st Century Transportation System" Policy Subcommittee, Summer 2009 (est.) America 2050 does not restrict membership.

In addition, over the last several years I have donated money to various organizations that consider their contributors "members." These include: Rock Creek Pool, Inc.; Friends of Rock Creek's Environment (FORCE); WAMU 88.5 American University Public Radio; Environmental Defense Fund; Humane Society of the United States; Natural Resources Defense Council; Smart Growth America; Friends of the Earth; The Nature Conservancy; Sierra Club; National Trust for Historic Preservation; and Chesapeake Bay Foundation.

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

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

Obama for America—$794 in 2011, $800 in 2008

Democratic Senatorial Campaign Committee—$1,000 in 2008

John Kerry for President—$1,750 in 2004

DNC $1,000 in 2004

Emily's List—$1,000 in 2004,

Friends of Dan Maffei—$700 in 2008

Campaign volunteer work:
Gore/Lieberman, Oct.—Nov. 2000

Dutch Ruppersberger for Congress, Oct. 2002

Frank Lautenberg for Senate, Oct. 2002

Tim Bishop for Congress, Nov. 2002

Charles Schumer for Senate, July—Oct. 2004

Kerry/Edwards, Oct.—Nov. 2004

Ron Klein for Congress, Oct. 2006

Lois Murphy for Congress, Oct. 2006

Obama/Biden, Oct.—Nov. 2008

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

Phi Beta Kappa, 1986.
Ellen Davis Goldwater History Prize, 1986.

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

Written

Research paper for America 2050—"Federal Decision-Making in Transportation Investments: Getting the Federal Government to do 'the Math'"—December, 2008.

As a freelance writer from 1986 to 1988 I covered real estate and business topics. Generally my writings were not published under my name and were used in newsletters, textbooks and business journals. I do not have any records of them now and I believe that all the entities I wrote for then have long since gone out of business.

Speaking

[See p. 16 of this document for a list of Ms. Trottenberg's major speeches.]

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

I testified at my confirmation hearing for my nomination to be Assistant Secretary for Transportation Policy before the Senate Commerce Committee, July 8, 2009.

I testified at a hearing on "DOT's Research and Development to Support the Department's Strategic Goals," before the House Committee on Science and Technology Subcommittee on Technology and Innovation, November 19, 2009.

I testified at a hearing on "Doubling U.S. Exports: Are U.S. Sea Ports Ready for the Challenge?" before the Senate Finance Subcommittee on International Trade, Customs and Global Competitiveness, April 29, 2010.

I testified at a hearing on "Building American Transportation Infrastructure Through Innovative Funding" before the Senate Commerce Committee, July 20, 2011.

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

For the last three years, I have served as the Assistant Secretary for Transportation Policy and, since November 2011, I have also served as the Acting Under Secretary of Transportation for Policy at U.S. DOT. The Office of Transportation Policy is the chief policy office for U.S. DOT and is responsible for analysis, development, communication and review of policy and plans for domestic and international transportation issues, including surface and aviation reauthorization, intercity passenger rail, international trade and transportation, and other intermodal initiatives, such as the implementation of MAP–21 and the development of DOT's proposed reauthorization language.

The office is responsible for running the TIGER Discretionary Grant Program, the Essential Air Service Program (EAS), the Small Communities Air Development Service Program (SCASDP), negotiates bilateral and multilateral aviation agreements and provides leadership on international transportation and trade policies.

I also have over 20 years of diverse policy-making and managerial experience in the U.S. Senate, in the Massachusetts State Senate, as well as the Aviation Department of the Port Authority of New York and New Jersey, the Department of Administration and Finance at the Massachusetts Port Authority, and in running an infrastructure non-profit focused on transportation.

My 12 years on Capitol Hill working for three U.S. Senators, the late Senator Daniel Patrick Moynihan, Senator Charles Schumer and Senator Barbara Boxer, enabled me to participate directly in all of the major transportation legislation during that period and to work closely with all Senate Committees of jurisdiction—Environment and Public Works, Commerce and Science, Banking, Housing and Urban Affairs, and Finance, as well as the Appropriations Committee.

I also served as Executive Director of Building America's Future (BAF), a bipartisan infrastructure coalition chaired by Governor Edward Rendell, Governor Arnold Schwarzenegger and Mayor Michael Bloomberg and was able to work closely with many state and local elected officials and get a deeper understanding of how Federal transportation policy affects them and what states and localities are doing to innovate and experiment.

I believe that our nation currently faces a once-in-a-generation opportunity to build a 21st century transportation system that will bolster U.S. economic growth and long-term prosperity, grow our freight system capacity, foster rural mobility, and enhance the safety and the quality of life for our citizens and communities.

I have had a lifelong interest and passion in transportation policy and what it can do to improve the lives of ordinary Americans and our nation's economy. I believe that my background and extensive experience with transportation policy at the regional, state and Federal levels, and my intimate knowledge of the legislative process, have prepared me to serve in this role.

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

As Acting Under Secretary of Transportation for Policy, I currently oversee the Office of Transportation Policy, which has an annual budget of approximately $20 million, over 120 employees, and in Fiscal Year 2012 awarded almost $1 billion in TIGER grants, managed the $220 million Essential Air Program, awarded $6 million in SCASDP grants. The Policy Office works closely with the Department of Transportation's Budget Office, Office of the General Counsel and Office of Administration to ensure that our organizational budget and grant dollars are subject to the appropriate management and accounting controls.

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

1. Implementation of MAP–21. Congress has passed a 27-month surface transportation authorization that makes significant changes to current law. Some of the new law took effect July 6 and many of the major programmatic changes take effect October 1. It will require extensive work throughout the agency to make programmatic changes, promulgate new rules, issue guidance, and coordinate successfully with State DOTs, transit agencies and other transportation stakeholders.

2. Development of Successor Legislation to MAP–21. While USDOT implements MAP–21, it must also continue its work with Congress and the transportation community to develop a national vision for transportation policy to put in place once MAP–21 expires at the end of 2014. The fiscal challenges are formidable, while the system has a huge backlog of maintenance needs as well as a need for significant new investment in the coming years.

3. Aviation Policy. Congress has also recently passed a new FAA reauthorization bill and now the Department's implementation is underway, including ensuring that the NextGen satellite-based navigation system is sustainably funded and finally underway, working with the other Federal agencies involved—the Department of Defense, NASA and the Department of Homeland Security.

B. POTENTIAL CONFLICTS OF INTEREST

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

As of June 30, 2012, I have $259,016 in a Thrift Savings Plan (TSP) account for retirement.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. None.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will continue to be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will continue to be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

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

In my current role as Assistant Secretary for Transportation Policy and Acting Under Secretary of Transportation for Policy, I have helped oversee U.S. DOT's legislative proposal, technical assistance, and correspondence to Congress on surface reauthorization. I have also been involved in deliberations on other departmental legislative efforts in aviation, transit safety, and pipeline safety. I have also been involved in the administration and execution of the American Recovery and Reinvestment Act of 2009, particularly the TIGER Discretionary Grant program and the Intercity Passenger Rail Service Corridor Capital Assistance Program, as well as MAP–21.

I worked in the U.S. Senate from 1996 to 2008 and so have worked on many pieces of legislation as part of my official duties.

As Executive Director of Building America's Future, I was involved in debates about the American Recovery and Reinvestment Act of 2009, as well as the next surface transportation reauthorization and FAA reauthorization.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's designated agency ethics official to identify any potential conflicts of interest. Any potential conflicts of interest will continue to be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics offi-

cial and that has been provided to this Committee. I am not aware of any potential conflicts of interest.

C. LEGAL MATTERS

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

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

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

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

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

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

Polly Trottenberg Major Public Speeches

Date	Sponsor	Event Description	Location	Role
09/08	Euromoney Conference on Public Private Partnerships	Challenges and Opportunities in U.S. Transportation Investment	New York, NY	Speaker
2/09	National Association of City Transportation Officials	Improving the Federal Funding Process and Achieving a State of Good Repair	New York, NY	Speaker
2/09	Regional Plan Association, Urban Land Institute and NARC	Metropolitan Regions Forum	Washington, DC	Speaker
3/09	City & Financial and U.S. DOT	Public Private Partnerships: USA Summit	Washington, DC	Speaker
5/09	Railway Supply Institute and One Rail	Advancing Passenger and Freight Rail in the Nation's Transportation System	Washington, DC	Speaker
5/09	The Road Gang	Building America's Future: Vision for the Reauthorization of the Surface Transportation Legislation	Washington, DC	Keynote Speaker
7/8/09	Senate Committee on Commerce, Science, and Transportation	Confirmation Hearing: Polly Trottenberg, Assistant Secretary for Transportation Policy	Washington, DC	Hearing Witness

Polly Trottenberg Major Public Speeches—Continued

Date	Sponsor	Event Description	Location	Role
9/1/09	Association for Commuter Transportation (ACT)	Moving Forward to Address Transportation, Economic & Environmental Challenges	Washington, DC	Keynote Speaker
10/5/09	The National Complete Streets Coalition and the American Planning Association	U.S. DOT's Views on Complete Streets Policies	Washington, DC	Speaker
10/28/09	Association of Metropolitan Planning Organizations (AMPO)	Annual Conference: Planning for a Better Future	Savannah, GA	Keynote Speaker
10/30/09	Kennedy School of Government Rappaport Institute for Greater Boston Harvard University	Fast Track to the Future: The New Vision for High-Speed Rail	Cambridge, MA	Speaker
10/31/09	Rail-Volution	Greening Your Future—Current and Emerging Opportunities for Federal Funding	Boston, MA	Speaker
11/19/09	House Committee on Science and Technology and Subcommittee on Technology and Innovation	DOT's Research and Development to Support the Department of Transportation's Strategic Goals	Washington, DC	Hearing Witness
12/1/09	U.S. DOT	Transportation Reauthorization Outreach Tour with Secretary LaHood	New Orleans, LA	Host/Speaker
1/12/10	Transportation Research Board	Annual Meeting: Meet the U.S. DOT. Leadership Panel	Washington, DC	Moderator
1/20/10	U.S. Conference of Mayors	78th Winter Meeting: "The Partnership for Sustainable Communities: Integrating Transportation, Housing, Land Use and Economic Development"	Washington, DC	Speaker
1/25/10	U.S. DOT	Transportation Reauthorization Outreach Tour with Secretary LaHood	Minneapolis, MN	Host/Speaker
1/29/10	The American Association of State Highway and Transportation Officials (AASHTO)	Center for Excellence in Project Finance, Congressional Staff Forum, "Legislative Policy Issues in Transportation Finance"	Washington, DC	Speaker
2/19/10	U.S. DOT	Transportation Reauthorization Outreach Tour with Secretary LaHood	Los Angeles, CA	Host/Speaker
2/19/10	WTS—Los Angeles Chapter	Women's Leadership and Transportation	Los Angeles, CA	Speaker
2/21/10	National Association of Regional Councils (NARC)	Energizing Regional Leadership and Shaping Administration and Congressional Priorities	Washington, DC	Speaker
2/24/10	Community Streetcar Coalition	Streetcar Summit: How streetcars promote economic development, livability and sustainability	Washington, DC	Speaker

Polly Trottenberg Major Public Speeches—Continued

Date	Sponsor	Event Description	Location	Role
3/9/10	Penn International Planning Workshop	High Speed Rail and America's National Infrastructure Strategy	London, UK	Speaker
3/11/10	United Kingdom Transport Ministry	Comparing U.S. and UK Transportation Policies (with Transport Minister Lord Adonis)	London, UK	Speaker
4/9/10	National Conference of State Legislatures (NCSL)	Public Hearing: High Speed Rail	Washington, DC	Speaker
4/16/10	Regional Plan Association	20th Annual Regional Assembly: "The Future of Trains and Planes"	Washington, DC	Panelist
4/29/10	Senate Committee on Finance, Subcommittee on International Trade, Customs, and Global Competitiveness	Hearing: Doubling U.S. Exports: Are U.S. Sea Ports Ready for the Challenge?	Washington, DC	Hearing Witness
5/4/10	ITS America	Surface Transportation Reauthorization Outreach	Houston, TX	Panelist
5/5/10	U.S. DOT	Transportation Reauthorization Outreach Tour with Secretary LaHood	Houston, TX	Host/Speaker
5/10/10	Asia-Pacific Economic Cooperation (APEC)	Transportation Energy Efficiency Improvement Potential in APEC Economies	Washington, DC	Keynote Speaker
6/4/10	U.S. DOT	Transportation Reauthorization Outreach Tour with Secretary LaHood	Bismarck, ND	Host/Speaker
6/16/10	Rudin Center at New York University	High Speed Rail: Leveraging Federal Investment Locally	New York, NY	Speaker
7/9/10	City of Denver, CO	Urban Circulator and Bus Livability Grant Announcement, Denver Regional Transportation District	Denver, CO	Speaker
7/14/10	U.S. DOT	Transportation Reauthorization Outreach Tour with Secretary LaHood	Washington, DC	Host/Speaker
9/1/10	Association for Commuter Transportation Conference .	How DOT is Moving Forward to address Transportation, Economic & Environmental Challenges	Washington, DC	Keynote Speaker
9/20/10	Capitol Bikeshare and U.S. DOT	Capitol Bikeshare Launch and Opening	Washington, DC	Panelist
9/28/10	The Associated General Contractors of America	National and Chapter Leadership Conference: The Administration's Approach to Infrastructure	Washington, DC	Speaker
9/29/10	T4America	National Leadership Conference	Washington, DC	Speaker
10/5/10	The National Complete Streets Coalition and the American Planning Association	U.S. DOT's Views on Complete Streets and Policies	Washington, DC	Speaker

Polly Trottenberg Major Public Speeches—Continued

Date	Sponsor	Event Description	Location	Role
10/29/10	National Association of Public Administrations (NAPA)	How Outcomes and the Integration of Programs can create Synergy, Efficiencies and Money	Washington, DC	Speaker
10/31/10	Rail-Volution	Greening Your Future: Current and Emerging Opportunities for Federal Funding	Boston, MA	Speaker
11/15/10	United States Studies Centre at the University of Sydney, Australia	American Transportation Policy	Brisbane, Australia	Speaker
11/15/10	United States Studies Centre at the University of Sydney, Australia	City of the Future: U.S. and Australian Perspectives	Brisbane, Australia	Keynote Speaker
1/21/11	Institute for Transportation & Development Policy (ITDP)	BRT in the U.S.: Challenges and How it Might be Enhanced	Washington, DC	Discussant
1/1/21/11	Orange County Transportation Authority (OCTA)	Breaking Down Barriers Initiative: Expedite Federally Funded Projects.	Washington, DC	Discussant
1/24/11	Institute for Transportation & Development Policy (ITDP).	2011 Sustainable Transportation Award Ceremony	Washington, DC	Keynote Speaker
1/25/11	Transportation Research Board	90th Annual Meeting: Surface Transportation Authorization—A Discussion with the U.S. Department of Transportation Leadership	Washington, DC	Moderator
1/26/11	Transportation Research Board	90th Annual Meeting: Grabbing the TIGER by the Tail—Experiences and Future Outlook	Washington, DC	Panelist
1/26/11	Transportation Research Board	90th Annual Meeting: Future Directions in Transportation—A Multimodal Dialogue with the U.S. DOT Deputy Administrators	Washington, DC	Moderator
3/17/11	Intelligent Transportation Society of America (ITS)	ITS 18th World Congress Board of Directors' Meeting	Washington, DC	Speaker
3/25/11	Bipartisan Policy Center National Transportation Policy Project (NTPP)	Grounding the Vision in the Political—nvironment Strategies far Overcoming Barriers and Key Next Steps	Warrenton, VA	Presenter
3/28/11	The National Industrial Transportation League (NITL)	Washington Freight Transportation Policy Forum: Mapping America's Vision for Freight Transportation	Alexandria, VA	Keynote Speaker
3/30/11	American Public Works Association (APWA)	Transportation Sustainability Summit: Transportation Sustainability and Surface Transportation Reauthorization	Washington, DC	Speaker

Polly Trottenberg Major Public Speeches—Continued

Date	Sponsor	Event Description	Location	Role
4/7/11	American Bus Association	Government Affairs and Policy Committee Meeting: Transportation Authorization, Planning, and the Evolution of Surface Transportation	Washington, DC	Speaker
4/8/11	Urban Institute	Infrastructure Policy Research Initiative Roundtable: Rationale, Choices, and Challenges	Washington, DC	Moderator
5/3/11	American Public Transportation Association	Surface Transportation: Where do we stand?	Washington, DC	Keynote Speaker
5/4/11	Senator Sheldon Whitehouse, Rhode Island	Second Annual Rhode Island Energy & Environmental Leaders Day	Washington, DC	Panelist
5/10/11	Coalition America's Gateways & Trade Corridors (CAGTC)	Annual Meeting: The role of freight in surface transportation authorization	Washington, DC	Speaker
6/13/11	American Public Transportation Association	The Power of Rail as a Foundation of Economic Growth	Boston, MA	Panelist
6/13/11	WTS Boston	Annual Awards and Scholars Dinner	Boston, MA	Keynote Speaker
6/15/11	Minnesota Transportation Affiance Reception	Congressional Delegation Fly-in: Latest Developments Impacting Federal Funding and Policy	Washington, DC	Speaker
6/24/11	Mineta Transportation Institute	National Policy Summit on Transportation Finance	San Francisco, CA	Speaker
6/24/11	Mineta Transportation Institute and the Commonwealth Club of California	Norman Y. Mineta National Policy Summit on Transportation Finance	San Francisco, CA	Keynote Speaker
6/25/11	Mineta Transportation Institute	20th Annual Mineta Transportation Institute Commencement Ceremony	San Jose CA	Commencement Speaker
6/24/11	White House Office of Public Engagement	White House Roundtable: Winning the Future with the Jewish Federation of Los Gatos	Los Gatos, CA	Host/Speaker
7/11/11	White House	Strong Cities Strong Communities Launch	Fresno, CA	Speaker
7/20/11	Senate Committee on Commerce, Science and Transportation	Building American Transportation Infrastructure Through Innovative Funding	Washington, DC	Hearing Witness
9/20/11	The French-American Foundation	The Infrastructure Nexus: Public Transportation in Urban and Interstate Schemes	Washington, DC	Speaker
10/13/11	Active Transportation Alliance	Active Transportation Alliance 25th Anniversary Dinner	Chicago, IL	Speaker
10/14/11	Center for Neighborhood Technology	Board Meeting and Staff Address	Chicago, IL	Keynote Speaker
10/14/11	WTS Chicago	White House Roundtable: Chicago Women in Trades	Chicago, IL	Speaker

Polly Trottenberg Major Public Speeches—Continued

Date	Sponsor	Event Description	Location	Role
10/18/11	Rail-Volution	Reauthorization for the Future: SAFETEA–LU and the Gasoline Tax	Washington, DC	Moderator
10/20/11	The White House Business Council and the Eastern Panhandle Regional Planning & Development Council	White House Roundtable: Martinsburg Business	Martinsburg, WV	Speaker
10/31/11	Taubman Center for State and Local. Government Harvard Kennedy School	The Current Politics of Transportation: The View from Washington	Cambridge, MA	Speaker
11/1/11	The White House Business Council	White House Roundtable: Winning the Future with Boston	Boston, MA	Speaker
11/4/11	The White House Business Council and Business Forward	White House Roundtable: Forum on Jobs and Economic Competitiveness	Washington, DC	Speaker
11/16/11	Multnomah County	TIGER III Groundbreaking Ceremony—Sellwood Bridge Replacement Project	Portland, OR	Speaker
1/12/12	White House Office of Intergovernmental Affairs	National Association of Counties Transportation Briefing	Washington, DC	Speaker
1/24/12	American Public Transportation Association	Transportation as a Foundation for Economic Health: Job Creation and Transportation Finance	Washington, DC	Speaker
2/24/12	The American Association of State Highway and Transportation Officials	AASHTO Congressional Forum: The Transportation Funding Issues and Reauthorization	Washington, DC	Opening Speaker
2/29/12	The American Association of State Highway and Transportation Officials	AASHTO Washington Briefing: Updates for Congressional High Speed and Intercity Passenger Rail Caucus Staff	Washington, DC	Speaker
3/8/12	The American Institute of Architects	Grassroots Leadership and Legislative Conference	Washington, DC	Keynote
3/9/12	City of Irving, TX	5th Annual Transportation and Infrastructure Convention	Washington, DC	Speaker
3/15/12	Institute for Transportation and Development Policy	Sustainable Mobility on the Road to the Rio+ 20 United Nations Conference on Sustainable Development	Washington, DC	Panelist
4/24/12	U.S. DOT, U.S. DOL and U.S. ED	National Transportation Workforce Summit	Washington, DC	Speaker
4/25/12	Atlanta Regional Commission	Board of Directors Meeting	Atlanta, GA	Speaker
4/26/12	The White Office of Public Engagement, U.S. DOT, and WTS Atlanta	White House Roundtable	Atlanta, GA	Speaker
5/10/12	WTS International	Annual Conference: 2012 WTS Awards Banquet	Denver, CO	Keynote Speaker

Polly Trottenberg Major Public Speeches—Continued

Date	Sponsor	Event Description	Location	Role
6/11/12	Northeast Association of Transportation Officials (NASTO)	2012 NASTO Conference "Regional Issues and Regional Cooperation" Perspectives on Federal Rail Programs	Baltimore, MD	Panelist
6/26/12	National Academy of Sciences/TRB	2nd Bi-Annual MTS Research & Development Conference: Diagnosing the Marine Transportation System	Washington, DC	Keynote Speaker
6/28/12	Urban Land Institute	Official Release of "Infrastructure 2012: Spotlight on Leadership"	Washington, DC	Keynote Speaker

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RESUMÉ OF POLLY E. TROTTENBERG

Professional Experience

U.S. Department of Transportation, Washington, D.C.—July 2009–Present

Acting Under Secretary for Policy and Assistant Secretary for Transportation Policy

- Appointed by President Barack Obama to lead the Department of Transportation's Policy Office. Responsible for developing and implementing key initiatives for Secretary LaHood and the Obama Administration on transportation policy, funding and financing, high-speed rail, and the $2.5 billion TIGER discretionary grant program. Manages and provides strategic direction to key policy and research offices within the 59,000-person Department including transportation finance, innovation, safety, economic analysis, and the environment.
- Led the effort to write the Administration's $556 billion surface transportation reauthorization bill that was sent to Congress. The bill included major policy reforms, including a focus on better integrating transportation, housing, environment and economic development, program consolidation, innovative finance and using competition, transparency and economic analysis to improve the performance of the U.S. transportation system.
- Member of the U.S. DOT Cabinet, Credit Council, Safety Council, Research Council, lead author of the USDOT Strategic Plan. Extensive experience with Federal budget and appropriations process, Federal personnel, procurement and contracting procedures. Has given numerous speeches, media appearances and testified before the U.S. Congress on a variety of transportation issues. Confirmed by the U.S. Senate, Top Security Clearance.

Building America's Future, Washington, D.C.—Aug. 2008–July 2009

Executive Director

- Managed a new bipartisan non-profit organization, Building America's Future (BAF), created to advocate for increased investment in infrastructure and major transportation policy reform. BAF is chaired by Governor Edward G. Rendell, Governor Arnold Schwarzenegger and Mayor Michael R. Bloomberg and has a membership of elected officials from across the U.S.
- Responsible for organization's start up operations, including representing the organization publicly and in the press, fundraising, hiring, policy development, advocacy, coalition-building and media strategy.

Senator Barbara Boxer, Washington, DC—Jan. 2006–July 2008

Deputy Chief of Staff and Legislative Director

- Chief policy advisor to Senator Boxer, responsible for developing comprehensive legislative agenda, media and political strategy, with focus on the Environment and Public Works and Commerce Committees. Areas of expertise include transportation, environment, appropriations, and economic development.
- Extensive experience on transportation legislation, including FAA Reauthorization, Airline Passenger Bill of Rights, Amtrak reauthorization, developed legislation to address Coast Guard and oil spill issues in the wake of the Cosco Busan accident in San Francisco Bay.

- Twelve years legislative experience in the U.S. Senate, specializing in bipartisan coalition-building to achieve successful legislative outcomes. Extensive management and leadership experience, responsible for the hiring, training, and supervision of legislative staff.

Senator Charles E. Schumer, Washington, D.C.—Jan. 1999–Dec. 2005

Legislative Director

- Chief policy advisor to Senator Schumer, responsible for developing comprehensive legislative agenda, media and political strategy, with focus on the Banking, Housing and Urban Affairs, Energy, Judiciary, and Finance Committees, with focus on transportation. Assisted in the creation and organization of all aspects of a new Senate office.
- Extensive experience on transportation legislation and policy, including SAFETEA–LU with a focus on mass transit funding and policy, Amtrak, port and aviation issues, including helping to bring new airline service to Upstate New York, and transportation appropriations.
- Led the development of New York's bipartisan post-September 11 legislative agenda, working closely with the Bush Administration, including securing $21 billion in appropriations, crafting a $5 billion business recovery tax package and a $4.5 billion transportation infrastructure plan for Lower Manhattan.

Senator Daniel Patrick Moynihan, Washington, D.C.—Oct. 1996–Dec. 1998

Legislative Assistant for Transportation, Public Works, and Environment

- Lead advisor to Senator Moynihan on the Environment and Public Works Committee. Responsible for developing policy and political strategy on transportation, public works, and environmental issues. Areas of expertise included TEA–21, Amtrak, mass transit, aviation, water resources, public buildings, and transportation appropriations.
- Developed political strategy for Northeast and urban states to maintain environmentally sustainable highway and mass transit programs during authorization of TEA–21. Won passage of initiative to encourage employers to offer mass transit benefits to employees.

Port Authority of NY & NJ, New York, NY—Oct. 1994–Sept. 1996

Senior Executive Assistant to the Director of Aviation, Gerald P. Fitzgerald

- Directed the Port Authority Board approvals process for the Aviation Department, which operates the region's three major airports—Kennedy, Newark, and LaGuardia. Supervised a staff of seven who provided administrative and policy support for 1,800-person department.

Executive Assistant to the Executive Director, Stanley Brezenoff

- Provided administrative and policy analysis support to the Executive Director in key areas, including negotiation of New York City Airport Lease, the AirTrain Project and Port dredging.

Massachusetts State Senate, Boston, MA—June 1992–Sept. 1994

Policy Analyst, Joint Committee on Commerce and Labor, State Senator Lois Pines, Chair

- Developed legislative initiatives for the Committee on labor and business issues, including economic and industrial development, defense conversion, welfare reform, job training, unemployment insurance, consumer protection, foreign trade, and tourism.

Massachusetts Port Authority, Boston, MA—Summer 1991

Research Associate, Department of Administration and Finance

- Conducted financial analysis projects, including the development and design of a new rate methodology and fee structure for Logan Airport's International Terminal and determined its financial implications for airline carriers and Massport.

Education

Harvard University, John F. Kennedy School of Government, Cambridge, MA

- Master of Public Policy, June 1992.
- Editor-in-Chief, *Kennedy School Beacon,* 1991–1992. Reporter, 1990–1991.

Columbia University, Barnard College, New York, NY

- B.A. *magna cum laude,* in History, May 1986.
- Elected to Phi Beta Kappa, April 1986.

Other Activities

- Ex Officio Member and Chair (2009–2010) of the U.S. Access Board.
- First Vice Chair, Northeast Corridor Infrastructure and Operations Advisory Commission:
- Ex Officio, Member, Transportation Research Board Executive Committee.
- Member, Women's Transportation Seminar.

Senator KERRY. Thank you very much, Ms. Trottenberg.

Dr. Doms.

STATEMENT OF DR. MARK E. DOMS, NOMINEE TO BE UNDER SECRETARY OF COMMERCE FOR ECONOMIC AFFAIRS, U.S. DEPARTMENT OF COMMERCE

Dr. DOMS. First, I'd like to say hello and thank you to my friends and family, both here and watching online. I wouldn't be here without their love and support.

Senator Kerry, Ranking Member Hutchison, and distinguished members of the Committee, I appreciate the opportunity to appear before you today as the nominee for Under Secretary for Economic Affairs at the Department of Commerce. It is an honor to be nominated by President Obama, and, if confirmed, I look forward to working with Acting Secretary Blank, other Commerce leaders, and the commerce, and especially this committee, in the years to come.

The Under Secretary position, which is housed in the Economics and Statistics Administration, has two key functions. The first is the management and oversight of two of the top statistical agencies in the United States—the Census Bureau and the Bureau of Economic Analysis. The second part of the job is to provide high-quality economic analysis to the Department, administration, Congress, and the public.

The management and oversight responsibilities for the Census Bureau and BEA are vitally important. As you know, the Census Bureau is responsible for conducting the decennial Census, the largest peacetime operation of the Federal Government. In fact, the Census Bureau is well underway in planning for the 2020 Census, which we hope to be the best-managed, ever.

In addition, the Census Bureau does a vast amount of data collection that gives businesses and Federal, State, local, and tribal governments the vital statistics needed to manage and grow the economy. BEA provides other economic data, such as gross domestic product, personal income and outlays, and trade in services.

If confirmed as Under Secretary, I will work with these agencies to continue to provide the American people greater and easier access to the best, most accurate information about our economy and our communities.

The second part of the Under Secretary's job is to serve as the economic advisor to the Secretary of Commerce, providing indepth economic analysis on current issues. In fact, the economic team at ESA, of which I am a part, worked closely with others to draft the COMPETES report that was delivered earlier this year to this committee. This report summarized the competitiveness and innovative capacity of the United States, and highlighted policies to strength-

en our economy, especially for the middle class. ESA also produced reports on women-owned businesses, IP-intensive industries, and broadband adoption, to name just a few. If confirmed as Under Secretary, I will continue to ensure that the Department, the American people, the administration, and the Congress have access to cutting-edge economic analysis.

The main responsibilities for the Under Secretary closely align with my past professional experiences. I pursued my Ph.D. in economics as a result of my desire to bridge the gap between data analysis and policy development. I began my professional work in economics at the Census Bureau, observing firsthand the challenges in collecting and using data. After leaving the Census Bureau, I spent the bulk of my career working in the Federal Reserve system. During that time, I observed how data collected by our statistical agencies helps guide how we understand the macro economy.

My most rewarding experience, however, has been serving as the Department of Commerce's chief economist for the past 3 years, a position that reports directly to the Under Secretary. In addition to my analytical work, I've had the opportunity to become intimately familiar with major issues facing our agency. These issues include: budgeting and management in a time of fiscal restraint; data collection for a growing, increasingly mobile population; and risk management.

Finally, in my capacity as chief economist, I've had the great pleasure of meeting regularly with business leaders from all parts of the country. It is one thing to observe data trends, it is another to talk to business leaders to understand the decisions that are the basis for those trends. These meetings have been exceedingly rewarding, but I believe their highest value has been in providing business leaders with a forum where their concerns are heard by administration officials.

I appreciate the opportunity to come before you today. I have enjoyed working with this committee, and appreciate meeting with members and staff about my nomination, and learning more about your work and priorities. If my nomination is approved by this committee and confirmed by the full Senate, I look forward to working with you and your staff members on all items of shared interest and concern.

Thank you.

[The prepared statement and biographical information of Dr. Doms follow:]

PREPARED STATEMENT OF DR. MARK E. DOMS, NOMINEE FOR UNDER SECRETARY FOR ECONOMIC AFFAIRS, U.S. DEPARTMENT OF COMMERCE

Chairman Rockefeller, Ranking Member Hutchison, and distinguished members of the Committee, I appreciate the opportunity to appear before you today as the nominee for the position of Under Secretary for Economic Affairs at the Department of Commerce. It is an honor to be nominated for Under Secretary by President Obama, and if confirmed I look forward to working with Acting Secretary Blank and others in leadership at the Department of Commerce. I also look forward to working with Congress, and especially this committee, in the years to come. I believe the Under Secretary for Economic Affairs to be a vital agency job, and I am grateful for the privilege of being considered for this position.

The Under Secretary job, which is housed in the Economics and Statistics Administration (ESA), has two key functions. The first is management and oversight of

two of the top statistical agencies in the United States, the Census Bureau and the Bureau of Economic Analysis (BEA). The second part of the job is to provide high-quality economic analysis to the Department, Administration, and the public.

The management and oversight responsibilities for the Census Bureau and BEA are vitally important. As you know, the Census Bureau is responsible for conducting the decennial census, the largest peacetime operation of the Federal Government. In fact, although it may seem early to do so, the Census Bureau is well underway in planning the 2020 Census, which we hope to be the best managed, most efficient and cost effective census ever. What may be a surprise to some, the Census Bureau also does an Economic Census of businesses in the US, which is currently underway. In addition, the Census Bureau does a vast amount of data collection that gives us vital statistics that are used by businesses, federal, state, local and tribal governments to manage and grow the economy. BEA provides other economic data, such as Gross Domestic Product (GDP), personal income and outlays, and trade in goods and services.

If confirmed as Under Secretary, I will work with these agencies to continue to provide the American people greater and easier access to the best, most accurate information about our economy and our communities.

The second part of the Under Secretary's job is to serve as the key economic advisor to the Secretary of Commerce, providing in-depth economic analysis on current issues. In fact, the economics team in ESA, of which I am a part of, worked closely with others to draft the COMPETES report that was delivered earlier this year to this committee. The COMPETES report is comprehensive report on the competitiveness and innovative capacity of the United States and highlights bipartisan priorities to sustain and promote American innovation and economic competitiveness.

ESA also produced reports on the middle class, women-owned businesses in the 21st century, IP-intensive industries and broadband adoption. What ESA does informs the Secretary on a daily basis, but also provides a data-driven perspective on economic issues relevant in the department's economic recovery efforts. If confirmed as Under Secretary, I will continue to ensure that the Department, the American people, the Administration, and the Congress have access to cutting-edge economic analysis.

The main responsibilities for the Under Secretary for Economic Affairs closely align with my past professional experiences. I pursued my Ph.D. in economics as a result of my desire to bridge the gap between data analysis and policy development. My research has mainly focused on how forces, especially technological change, affect our economy, most notably in the areas of productivity growth and wages.

I began my professional work in economics at the Census Bureau, learning the intricacies of data, observing first-hand the challenges in collecting and subsequently using data. After leaving the Census Bureau, I spent the bulk of my career working in the Federal Reserve System. During that time I observed first-hand how the data collected by our statistical agencies guides how we understand the macro economy. While at the Federal Reserve, I interacted frequently with the staffs of Census and BEA. Also while at the Federal Reserve, I learned how to produce a primary economic indicator, the index of industrial production, which measures the output of our Nation's factories, utilities, and mines.

My most rewarding professional experience has been serving as the Department of Commerce's Chief Economist, a position that reports directly to the Under Secretary of Economic Affairs. In addition to my analytical work, I have had the opportunity to become intimately familiar with major issues facing our agency and bureaus. These issues include budgeting and management in a time of fiscal restraint; data collection for a growing, increasingly mobile population; and communicating to the public the commitment we have to data security, cost control, and risk management. I believe this experience has improved my effectiveness as a manager and strategic thinker, and will serve the Secretary, the Administration, the Congress and the public well.

Finally, in my capacity as Chief Economist, I have had the great pleasure of meeting regularly with business leaders from all parts of the country. It is one thing to observe data trends, it is another to talk to business leaders to understand the decisions that are the basis for those trends. These meetings have been an exceedingly rewarding experience for me, but I believe their true value has been in providing business leaders with a forum where their concerns are heard and responded to by Administration officials.

I appreciate the opportunity to come before you today. I have enjoyed working with this committee and appreciate meeting with members and staff about my nomination and learning more about your work and priorities. If my nomination is approved by this Committee and confirmed by the full Senate, I look forward to work-

ing with you and your staff members on all items of shared interest and concern. Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Mark Edward Doms.
2. Position to which nominated: Under Secretary for Economic Affairs, Department of Commerce.
3. Date of Nomination: September 13, 2012.
4. Address (List current place of residence and office addresses):

Residence: Information not released tothe public.

Office: U.S. Department of Commerce 1401 Constitution Ave, NW, HCHB Room 4852, Washington, D.C. 20230.

5. Date and Place of Birth: January 21, 1963; Petersburg, Virginia.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Not married.

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

1992: University of Wisconsin-Madison, Ph.D. in economics. Major fields: econometrics and industrial organization.

1986: University of Maryland Baltimore County, B.A. in mathematics and economics (Economics Alumnus of the Year, 2010).

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

Chief Economist, Department of Commerce, August 2009 to present

Senior Economist, Federal Reserve Bank of San Francisco, 2003–2009

Economist, Board of Governors of the Federal Reserve System, 1996–2002

Economist, Organization for Economic Cooperation and Development, Paris, 1995–1996

Economist, Center for Economic Studies, Department of Commerce, 19921995

9. Attach a copy of your resume. A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company firm, partnership, or other business, enterprise, educational, or other institution within the last five years: None.
12.Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

None of the organizations listed below restrict membership on the basis of sex, race, color, religion, national origin, age, or handicap.

National Association of Business Economist	2006–2008, 2010	Member
Comparative Analysis of Enterprise Data	2008–2009	Executive Director
American Economic Association	1998–2004	Member
Community Club (tutoring organization)	1999–2000, 2012	Member

13. Have you ever been a candidate for and/or held a public office (elected, nonelected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.
14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

$500, Obama for America, 7/7/2011
$250, Obama for America, 8/5/2012

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements. None.

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

See attached resume for publications. Relevant speeches:

A. 2012 NABE Industry Conference: Making it in America: Manufacturing Matters, May 30–31, 2012, Federal Reserve Bank of Cleveland, Cleveland, OH.

B. GlobalWlN STEM Education Panel, May 24, 2012, 122 Cannon House Office Building.

C. The Coalition of Service Industries &The Georgetown Center for Business and Public Policy, 101 Constitution Avenue, NW, May 3, 2012, Digital Delivery of Cross-Border Trade in Services: The Threats, The Remedies.

D. Manufacturing Innovation 2012, Orlando, FL, May 7, 2012, National Manufacturing Strategy Session.

E. The NAM Economic Forum, Wednesday, October 19, 2011, Mandarin Oriental Hotel, 1330 Maryland Avenue, NW, Washington, D.C.

F. Jobs, Inequality, and the Public Sector: Improving the Economic Competitiveness and Innovative Capacity of the U.S., October 11, 2011, Georgetown University in Washington, D.C.

G. The Manufacturing Economy: Proximity and Performance, May 6, 2011, Federal Reserve Bank of Cleveland, Cleveland, OH.

H. The Middle East Program, Program on America and the Global Economy, and United States Studies of the Woodrow Wilson International Center for Scholars, Women and Entrepreneurship: Perspectives from the Middle East and the United States, March 29, 2011.

I. The Pew Center on Global Climate Change and the Georgetown Climate Center, State and Federal Climate and Energy Policy: Where do we go from here?, February 24, 2011.

J. 2nd Annual Conference on Microdata Access—"Responsible Data Sharing in the 21st Century", February 10, 2011, National Press Club, 529 14th Street Northwest, Washington D.C. 20045.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

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

For over the past 3 years, I have served as Chief Economist of the Department of Commerce, a position that reports directly to the Under Secretary of Economic Affairs. While in this position, I have worked directly on, and have become intimately familiar with, all major issues facing the Economics and Statistics Administration. These issues include budgeting challenges, data collection, communication, cost control, and risk management. Further, in my role as Chief Economist, I demonstrated how the data produced by BEA and Census can be used to inform a wide range of policy discussions, as evidenced by the numerous reports that flowed from ESA during my tenure.

In my previous occupations (mainly with the Federal Reserve System), I was a significant user of the data products produced by Census and ESA, and contributed to the theories and methods of producing data products.

The primary reasons I wish to be confirmed as Under Secretary for Economic Affairs are first to serve my country in a constructive way and, second, to help provide vital information to our society (through ESA/BEA/Census) in a cost-effective way.

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

Ensuring proper management and accounting controls over ESA/BEA/Census are two of the primary responsibilities of the Under Secretary for Economic Affairs. It is of primary importance to make sure that our tax dollars are spent wisely.

As stated above, I have developed experience managing large organizations over the past 2–1/2 years, especially as the previous Under Secretary (Rebecca Blank) held various other roles in the department. I have regularly participated in and contributed to all significant discussions surrounding Census and BEA.

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

The first challenge is to lower the per-household costs of the 2020 Census. As the decennial Census is the single largest non-defense activity of the U.S. government, it is essential to conduct the research and get the systems in place to stop the per-household cost increases of previous decades.

The second challenge is to better communicate with the public the value of government collected data.

The third challenge is to ensure that our tax dollars are wisely spent.

B. POTENTIAL CONFLICTS OF INTEREST

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

I have a 401(k) and a pension starting at age 65 with the Federal Reserve (the pension is based on my previous years of service).

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. None.

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

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

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

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

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

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

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

C. LEGAL MATTERS

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

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

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

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

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

No other relevant information.

D. RELATIONSHIP WITH COMMITTEE

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

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

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

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

CURRICULUM VITAE OF MARK EDWARD DOMS

Education

Ph.D. in Economics, University of Wisconsin-Madison, 1992.

B.A. in Mathematics and Economics, University of Maryland Baltimore County, 1986.

Employment

U.S. Department of Commerce, Chief Economist—August 2009 to present

Key advisor to the Secretary of Commerce on economic issues and development. Directs a staff of economists and policy analysts who produce a wide variety of reports and forecasts focused on current economic conditions and trends.

Federal Reserve Bank of San Francisco, Senior Economist—San Francisco 2003–2009

Advised the Bank President and boards of directors on current economic issues. Conducted research in the areas of consumer spending, housing, productivity, and innovation.

Board of Governors of the Federal Reserve System, Economist—Washington, D.C. 1996–2002

Prepared projections on the economy for the Board of Governor's Greenbook forecast, monitored economic conditions, and conducted longer-term economic research.

Organization for Economic Cooperation and Development, Economist—Paris 1995–1996

Directed an international study on the relationship between technological change, productivity, and labor demand; encouraged international coordination in using government microdata in research and policy analysis.

Center for Economic Studies, U.S. Department of Commerce, Economist—Washington, D.C. 1992–1995

Conducted longer-term research on productivity growth, technology, worker skills, and wages.

Publications—Peer Reviewed Journals

"Endogenous Skill Bias in Technology Adoption: City-Level Evidence from the IT Revolution," with Paul Beaudry and Ethan Lewis, *The Journal of Political Economy,* December 2010.

"Local Labor Market Endowments, New Business Characteristics, and Performance," with Alicia Robb and Ethan Lewis. *Journal of Urban Economics,* 67(1), January 2010, pages 61–77.

"Constructing Price and Quantity Indexes for High-Technology Goods", SSHRC International Conference on Index Number Theory and the Measurement of Prices and Productivity, A. Nakamura, B. Balk, and E. Diewert eds. (with Ana Aizcorbe and Carol Corrado), 2006.

"Communications Equipment: What Has Happened to Prices?," NBER/CRIW, Measuring Capital in the New Economy, University of Chicago Press, 2005.

"Prices for Local Area Network Equipment", with Christopher Forman, *Information Economics and Policy,* 17(3), July 2005, pages 365–388.

"How Fast Do Personal Computers Depreciate? Concepts and New Estimates," in Tax Policy and the Economy, NBER, Volume 18, James Poterba ed., MIT Press (with Wendy Dunn, Stephen Oliner, and Daniel Sichel).

"IT Investment and Firm Performance in U.S. Retail Trade," with Ron Jarmin and Shawn Klimek, *Economics of Innovation and New Technology,* October 2004, 13(7), pages 595–614.

"Understanding Productivity: Lessons from Longitudinal Microdata", with Eric Bartelsman, *Journal of Economic Literature,* September 2000, 38(3), pages 569–94.

"Capital Adjustment Patterns in Manufacturing Plants", with Timothy Dunne, *Review of Economic Dynamics,* April 1998, 1(2), pages 409–429.

"Comparing Wages, Skills, and Productivity between Domestically and Foreign-Owned Manufacturing Establishments in the United States", with J. Bradford Jensen, in Geography and Ownership as Bases for Economic Accounting, 1998, pages 235–55, NBER Studies in Income and Wealth, vol. 59. Chicago and London: University of Chicago Press.

"Workers, Wages, and Technology", with Timothy Dunne and Kenneth Troske, *Quarterly Journal of Economics,* February 1997, 112(1), pages 253–90.

"The Effect of Technology Use on Productivity Growth", with Robert McGuckin and Mary Streitwieser, *Economics of Innovation and New Technology,* 1998, 7(1), pages 1–26.

"Estimating Capital Efficiency Schedules within Production Functions", *Economic Inquiry,* January 1996, v. 34, iss. 1, pp. 78–92.

"The Role of Technology Use in the Survival and Growth of Manufacturing Plants", with Timothy Dunne and Mark Roberts, *International Journal of Industrial Organization,* December 1995, 13(4), pages 523–42. (Also reprinted in Innovation, Evolution of Industry and Economic Growth, Audretsch and Klepperer (eds), The International Library of Critical Writings in Economics, Series Editor: Mark Blaug, 2000.)

"Energy Intensity, Electricity Consumption, and Advanced Manufacturing Technology Usage", with Timothy Dunne, *Technological Forecasting and Social Change,* October, 1995.

Publications—Federal Reserve Bank of San Francisco Economic Letters

"The Outlook for Productivity Growth: Symposium Summary," March, 2009.

"Summer Reading: New Research in Applied Microeconomics Conference Summary," September, 2008.

"The Narrowing of the Male-Female Wage Gap," with Ethan Lewis, June, 2007.

"House Prices and Subprime Mortgage Delinquencies," with Fred Furlong and John Krainer, June, 2007.

"Financial Innovations and the Real Economy: Conference Summary," with John Fernald and Jose A. Lopez, March, 2007.

"The Rise in Homeownership," with Meryl Motika, November, 2006.

"Property Debt Burdens," with Meryl Motika, July, 2006. "The Diffusion of Personal Computers across the U.S.," December, 2005.

"IT Investment: Will the Glory Days Ever Return?," June, 2005.

"Productivity Growth and the Retail Sector," December, 2004.

"Consumer Sentiment and the Media," October, 2004.

"The Bay Area Economy: Down but Not Out," with Mary Daly, November, 2003.

Publications—Other Works

"Regional Growth and Resilience: Evidence from Urban IT Centers," with Jeremy Gerst and Mary Daly in Federal Reserve Bank of San Francisco's *Economic Review,* 2009.

Review of, "Technology, Growth, and the Labor Market," D. Ginther and M. Zavodny eds., *Journal of Economic Literature.*

"The Boom and Bust in Information Technology Investment," Federal Reserve Bank of San Francisco's *Economic Review,* 2004, pages 19–34.

"Productivity, Skill, and Wage Effects of Multinational Corporations in the United States", with J. Bradford Jensen, in *Foreign Ownership and the Consequences of Direct Investment in the United States: Beyond Us and Them,* Nigh Westport, CT: Quorum Books.

"Labor Supply and Personal Computer Adoption," with Ethan Lewis, Federal Reserve Bank of San Francisco Working Paper 2006–18.

Senator KERRY. Thank you very much, Dr. Doms.

Ms. Clyburn.

STATEMENT OF HON. MIGNON L. CLYBURN, NOMINEE TO BE A COMMISSIONER OF THE FEDERAL COMMUNICATIONS COMMISSION (REAPPOINTMENT)

Ms. CLYBURN. Senator Kerry, Ranking Member Hutchison, and distinguished members of the Committee, good afternoon and thank you for the incredible privilege afforded me through today's exchange.

I, too, would like to acknowledge my family and friends here today, including my father, Congressman James Clyburn.

I respectfully request, Mr. Chairman, that my full statement be included in the record.

Senator KERRY. Without objection, it will be.

Ms. CLYBURN. It is hard to believe that more than 3 years have passed between my initial appearance before this committee and now. During that time, the FCC has undertaken some of the most significant policy issues in its history, and I believe the American public is better off as a result.

While it is true that the Commission has been diligent in promoting deployment and adoption of communications services since 2009, it could very well pale in comparison to what the agency must do in order to adapt to the changing consumer trends, technological advances, and innovations that are sure to continue.

Case in point: When I first sat before you, in 2009, believe it or not, tablet devices had not even been introduced to the U.S. consumer. Today, 22 percent of American adults own such a device, and that is up from only 11 percent last year.

With the communications industry evolving at such a rapid pace, I firmly believe that, no matter what become—comes before the Commission in the months and years ahead, we must ensure that the agency stays true to those core basic principles laid out in the Communications Act: consumer protection, effective competition, and public safety. We run a process, at the Federal Communications Commission, which allows for numerous opportunities for public comment from initial notice to final order. The FCC seeks, welcomes, and considers ideas and critiques from individuals and large entities, alike. Such input is essential, and it offers everyone, from the average American to the most connected CEO, a seat at the table. This openness is paramount to our mission.

One-sixth of the American economy can be directly linked to industries the FCC regulates. Our policies have been devoted to promoting broadband deployment and adoption while modifying current policies and implementing new ones.

And I am proud that almost all of this work has been done on a bipartisan basis.

The FCC is able to be heard outside of Washington, D.C., because funding from Congress allows us to better serve our citizens. I am grateful to all of you for that. I have had the opportunity to participate with some of you in townhalls and other meetings in your respective states. Those exchanges give us a sense of how our policies are being received outside of the Beltway.

I am also proud of the work that we have done for citizens who so often struggle for access to services and adequate devices. In 2010, Congress wisely provided the Commission with an incredible tool—the 21st Century Communications and Video Accessibility Act—and we have worked diligently to enact its provisions. In February, Congress passed another historic piece of legislation, enacting the spectrum management and public safety provisions of the Middle Class Tax Relief and Job Creation Act of 2012. We plan to faithfully comply with both the language and the spirit of that statute.

In addition, I believe that our Universal Service reforms focuses on consumers. We are ensuring that more Americans have access to both voice and broadband service than under the previous regime. And consistent with the goals of the Act, we are working hard to eliminate the rural urban and rural divides. Further, we recognized the importance of both fixed and mobile broadband by allocating funding for both types of services in high-cost areas.

When Congress created the FCC in 1934, it made one of the Commission's fundamental obligations to ensure the promotion of safety of life and property through the use of wire and radio communications. The devastation and service outages caused by Derecho and Superstorm Sandy show that this obligation remains as vital today as it did nearly 80 years ago. We may not be able to prevent natural disasters, but we can, and must, improve our nation's ability to respond in such crises.

It has been a privilege to serve as a Federal Communications Commissioner for the past 3 and one-half years. I am honored to appear before you today, and look forward to any questions you may have.

Thank you very much.

[The prepared statement and biographical information of Ms. Clyburn follow:]

PREPARED STATEMENT OF HON. MIGNON L. CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Chairman Rockefeller, Senator Hutchison, and distinguished members of the Committee, good afternoon and thank you for the incredible privilege afforded to me through today's exchange. It is hard to believe that more than three years have passed between my initial appearance and now.

In that time, the FCC has undertaken some of the most significant policy issues in its history, and I believe the American public is better off as a result. While it is true that the Commission has been diligent promoting deployment and adoption of communications services since 2009, it could very well pale in comparison to what the agency must do in order to adapt to the changing consumer trends and the technological advances and innovations sure to continue. Case in point: When I first sat before you in 2009, believe it or not, tablet devices had not even been introduced to the U.S. consumer. And now, according to the most recent data for this year, 22 percent of American adults own such a device. That amount has doubled from 11 percent in 2011. Today, more people are relying on mobile broadband than ever before.

With the communications industry evolving at such a rapid pace, I firmly believe that no matter what comes before the Commission in the months and years ahead, we must ensure that the agency stays true to those basic, core principles laid out in the Communications Act: Consumer protection, effective competition, and public safety.

We run a process at the Federal Communications Commission that allows for numerous opportunities for public comment. This is designed to ensure that we never lose sight of our core tenets. From initial Notice to final Order, the FCC seeks, welcomes, and considers ideas and critiques from individuals and large entities alike. Such input is essential and offers the average American and the most connected CEO a seat at the table. Our framework affords everyone an opportunity to participate in our deliberations and ensures that attorneys, specialists, and well-heeled consultants are not the only ones who have access to our regulatory process. This openness is paramount to our mission.

I have enjoyed being a part of this engagement, as it has allowed me to hear and absorb first-hand how the votes I cast and decisions I make can help or potentially hurt, the communications landscape of America. My door is open to all, and while at times that can lead to an overwhelming calendar, the meetings I have with outside parties are the most rewarding and intellectually-stimulating aspects of my current role. At one moment I may hear from disabled advocates requesting parity when it comes to accessibility concerns, and the next engage in discussions on new types of medical services, such as Medical Body Area Networks, which may improve treatment for seriously ill patients.

One-sixth of the American economy can be directly linked to the industries the FCC regulates, and through smart communications policies, we play a large part in stimulating investment, promoting innovation, and encouraging job creation. For example, we have provided significant Commission resources promoting broadband deployment and adoption by modifying current policies and implementing new ones. And I am proud that almost all of this work has been done on a bipartisan basis. I am also thankful for the Commission's dedicated public servants, whose hard work and sage advice enable us to achieve the best results for the American people.

The FCC is able to be heard here and outside of Washington because funding from Congress allows us to better serve our citizens. I am grateful to all of you for that. I have had the opportunity to participate with some of you in town halls and other meetings in your respective states. Those exchanges not only give us a sense of how our policies are being received outside of the beltway, but they help to put a public face on an agency that at times, receives more criticism than praise, in large part, because there are too few opportunities for public interaction. I wish this were not so, as in recent years the FCC has done much to improve communication opportunities for many, including those with disabilities.

I am extremely proud of the work that we have done for citizens who so often struggle for equitable access to services and adequate devices. In 2010, Congress wisely provided the Commission with an incredible, bipartisan tool: The 21st Communications and Video Accessibility Act—and we have worked quickly to enact its provisions. For example, the Commission is implementing rules that require certain video programming devices to be capable of displaying closed captioning. We have also promulgated new rules regarding captioning and full-length video programming, deeming that when a captioned TV program is re-shown on the Internet in segments, it must be captioned if substantial portions of the entire program are shown in those segments. This is a prime example of streamlined, efficient, and bipartisan support and good faith dealing between the Commission and industry, resulting in consumer benefits that were long overdue and greatly needed.

In February of this year, Congress passed another historic piece of legislation by enacting the spectrum management and public safety provisions of the Middle Class Tax Relief and Job Creation Act of 2012. We plan to comply faithfully with both the language and spirit of that statute.

In the Chairman's strategic plan, one of the outlined goals states that a competitive framework for communication services should foster innovation while offering consumers reliable and meaningful choice in affordable services. We have sought to promote such competition through our efforts on interoperability in the lower 700 MHz band, the TV White Spaces proceeding, amending Wireless Communications Service rules to provide 30 megahertz of spectrum for mobile broadband service, enabling greater use of microwave licenses for wireless backhaul in rural areas, and the data roaming rules. And I am proud to say that the American communications ecosystem is better for it.

In addition, I believe that our reforms on universal service center on consumers—ensuring that more Americans have access to both telephone and broadband service than under our previous system. And consistent with the goals of the Act, we are

working hard to ensure that there is no rural/urban divide and that we do not favor one technology over another, by recognizing the importance of both fixed and mobile broadband and allocating funding for both types of services in high-cost areas.

When Congress created the FCC in 1934, it made one of the Commission's foundational obligations "the promotion of safety of life and property through the use of wire and radio communications." The devastation and service outages caused by Derecho and Super Storm Sandy show that obligation remains as vital today as it did almost eighty years ago. We may not be able to prevent natural disasters, but we can and must improve our Nation's ability to respond in such crises. It is essential, particularly in times of major emergencies such as during and after a natural disaster, that communications networks keep us connected to each other and to the emergency help that we may need. I want to recognize the dedicated FCC Commissioners and staff who worked hard during and after the storm, to assist providers and consumers in getting our communication networks back up and running.

It has been a privilege to serve as a Federal Communications Commissioner for the past three and one half years. I am honored to appear before you today for further consideration and look forward to any questions you may have. Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Mignon Letitia Clyburn (Ming).

2. Position to which nominated: Commissioner, Federal Communications Commission.

3. Date of Nomination: June 25, 2009.

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

Residence: Information not released to the public.

Office: Federal Communications Commission, 445 12th Street SW, Washington, D.C. 20554.

5. Date and Place of Birth: March 22, 1962; Charleston, South Carolina.

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

Not applicable

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

Bachelor of Science, Banking and Finance, and Economics
University of South Carolina, August 1980–May 1984

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

Commissioner, Federal Communications Commission, July 2009 to present.

Commissioner, South Carolina Public Service Commission, July 1998–July 2009 (Chair, 2002–2004).

General Manager, Editor, The Coastal Times Newspaper, May 1984–June 1998.

Producer, The Coastal Times Today, public affairs program, UPN, 1991–1992.

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

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

South Carolina Advisory Committee, U.S. Commission on Civil Rights, (1999–2009), Served as chair when it was reconstituted.

South Carolina Energy Advisory Council (2001–2009).

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

The Palmetto Project, Secretary/Treasurer, Trustee, 2004–2009.

Trident Technical College Foundation, Board Member, Executive Committee Member, 2001–2009.

Columbia College Board of Visitors, 2007–2009 SC Cancer Center Board, 2007–2009.

Indigo Holding Company, Real Estate, President, 2001–2009.

YWCA of Greater Charleston, Board Member and President 2006–2008.

Reid House of Christian Service, Board Member, 2001–2008.

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

Reid House of Christian Service, 2001–2008.

YWCA of Greater Charleston (all women at the time), 2005–2009, President.

Charleston Chapter of the Links, Incorporated (all women) 1999 to present.

Edventure Children's Museum, Executive Board, 1999–2005 Morris Brown AME Church, Member, 1968 to present.

National Association of Regulatory Utility Commissioners (NARUC), 1998–2009: Audit Committee, Washington Action Committee (Chair, two years), Utility Market Access Partnership Committee (UMAP), Electricity Committee, Energy, Resources and the Environment Committee.

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

I was elected four times to serve on The Public Service Commission of South Carolina (1998, 2002, 2004, and 2006). No debts are outstanding. My full term of service was from July 1998 until July 2009.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $5OO or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Friends of James E. Clyburn, $1,000, 2006; $250, 2012

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

National Council of Negro Women Scholarship (Columbia, SC).

Graduate of the South Carolina Executive Institute.

James Bonbright Award, Terry College of Business.

Lincoln C. Jenkins Award, Columbia, SC Urban League.

Community Broadband Hero Award, National Association of Telecommunications Officers and Advisors.

National Hispanic Media Coalition, Impact Award.

Women in Cable Telecommunications, Public Policy Award.

National Organization of Black Elected Officials (Women), National Shining Star Award.

Crittenton Services of Greater Washington, Legacy Award for Leadership.

West Ashley Democrats Marjorie Amos Frazier, Pacesetter Award.

Consumer Electronics Association, Digital Patriots Award.

College of Charleston, Distinguished Communicator Award.

Charleston, SC Branch, NAACP, Trailblazer Award.

Alliance for Women in Media, 60 at 60.

Community Service/Business Awards from: Omega Psi Phi and Phi Beta Sigma Fraternities, Delta Sigma Theta and Sigma Gamma Rho Sororities, Arabian Temple and Court, National Council of Negro Women, United Negro College Fund, Moja Arts Festival, and Mt. Zion and Morris Brown AME Churches.

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

February 15, 2012, *Technology Support for Small Businesses,* E Business NOW, Washington, D.C.

November 8, 2011, *Transition of Universal Service from Phone to Broadband,* Massachusetts Broadband Conference, Boston, Massachusetts.

April 14, 2011, *Women in Public Safety Communications,* The Association of Public Safety Communications Officials International Orlando, FL.

September 14, 2010, 24th Annual NAMIC Conference, *3D: Diversity, Digital, Demographics,* New York, NY.

June 14, 2010 *Wireless Spectrum Needs: What is the Best Way to Serve All of the American People?* Rainbow PUSH Coalition 39th Annual Convention, Chicago, IL.

March 9, 2010, *A National Digital Literacy Corps to Meet the Adoption Challenge,* Digital Inclusion Summit, Washington, D.C.

September 21, 2009, *Broadband Adoption: Traveling the Consumer's Last Mile,"* The Joint Center for Political and Economic Studies Washington, D.C.

November 23, 2008, *Transformative Power of Broadband: Key Issues During Challenging Times,* National Foundation of Women Legislators, Sarasota, FL.

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

February 16, 2011, Appeared before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, United States House of Representatives.

June 24, 2010, Appeared before the Senate Commerce Committee on "Universal Service: Transforming the High-Cost Fund for the Broadband Era".

March 25, 2010, Appeared before the United States House of Representatives Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, "Oversight of the Federal Communications Commission: The National Broadband Plan"

September 17, 2009, Appeared before the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, Hearing on "Oversight of the Federal Communications Commission".

July 15, 2009, Confirmation hearing before the Senate Commerce Committee.

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

During my 11 years as a State Commissioner, my daily interactions with investor-owned utilities and the consumers they serve reinforced two main principles which guide the manner in which I approach government service.

That "on the ground perspective" of how key decisions directly impact people and enterprises at the state and local levels, made me more sensitive to why it is so vital for regulators to be open-minded and fair, and balanced, when it comes to rule-making. Secondly, interactions with Commissioners from other states during meetings and through committee assignments, not only allowed for cooperative, non-partisan engagement, but the sharing of ideas and best practices ensured that the effects of any decision made in one jurisdiction took into account any potential negative, or unintended impact, on the another.

I bring those key lessons and a spirit of cooperation to the Federal Communications Commission, through the recognition that sound policy is not one-size-fits-all exercise. Great ideas and pragmatic policy are more often derived through robust and inclusive engagement.

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

With my leadership experience at the state commission level and through several voluntary commitments, I learned quickly the value of fostering an environment where transparency, open lines of communication, adequate personnel training, and clear goals and objectives can be found. If confirmed, I look forward to continuing my work with the Chairman and the staff, to ensure proper management and fiscal accountability, by being a member of a team which leads by example.

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

Universal Service and Intercarrier Compensation Reform

The Commission made history last quarter with the comprehensive reform and modernization of the Universal Service and Intercarrier Compensation systems. Now in place are fiscally responsible and incentive-based means, to ensure ubiquitous affordable voice and broadband service, on both the fixed and mobile platforms.

This rulemaking will have significant impact on legacy providers, by linking any future funding to firm build-out requirements, and enacting budgetary adjustments over a number of years. This may impact a large number of providers' current economic framework, so years of work and engagement will need to take place as these significant reforms are phased in.

Incentive Auctions

Current estimates indicate that over 300 million wireless consumers download more than five billion apps annually (2010 figures). Among those are approximately 101 million smartphones users, who consume 24x more data than their traditional mobile phone counterparts. With that explosive growth in traffic, compounded with the growth in the use of tablets, it is apparent that the current demand for spectrum could soon exceed the available supply.

The need for new spectrum has become such a national priority that, in June 2010, President Obama released a memorandum entitled "Unleashing the Wireless Broadband Revolution." The Memorandum asserts that, to address this looming spectrum shortage, we should promote an environment where innovation thrives, and we should take steps to unlock the value of otherwise underutilized spectrum.

The FCC, with its authority to conduct voluntary incentive auctions, will provide financial incentives for current licensees to acquire and reallocate this valuable real estate for its most efficient use. This long-term, comprehensive engagement will entail not only the setting up and execution of the auction itself, but also spectrum reallocation and other administrative functions. The entire process will take between six and 13 years to complete.

Interoperability in the 700 MHz Band

In order to encourage the most efficient use of spectrum, promote the widest possible deployment of communications services, and ensure the opportunity for robust competition in the marketplace, the Commission must not only find and free up spectrum, it must enable both large and small licensees to have meaningful access to advanced devices. In this particular band lies the only noninteroperable commercial mobile service frequency. It must be determined whether a unified band class would result in harmful interference in other Blocks and if so, can it be mitigated in order to deliver more broadband services.

B. POTENTIAL CONFLICTS OF INTEREST

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

Currently, I am only enrolled in the traditional state/federal retirement plans, 401K and interest bearing savings accounts.

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

No, I do not.

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

I am unaware of any potential conflicts of interest.

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

I am unaware of any issue that could result in a possible conflict, however, any potential conflict of interest, will be resolved in accordance with the terms of the ethics agreements in which I have entered into with the agency's designated ethics official. That agreement has been supplied to this committee.

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

On April 4, 2011, I delivered a speech, and subsequently issued a series of statements, on a piece of legislation introduced in North Carolina entitled "Level Playing Field/Local Government Competition." The bill, I believed, discouraged municipal governments from directly addressing deployment options in areas where the private sector has failed to meet local service needs.

Earlier in my regulatory career, I served for nearly three years as Chair of the Washington Action Committee for the National Association of Regulatory Utility Commissioners and its Legislative Task Force. NARUC has been active in a number key legislative matters and jurisdictional issues which intersect the Federal Communications Commission's core functionalities. Also, in my capacity as a South Carolina Public Service Commissioner, I was a resource to lawmakers in South Carolina on consumer issues and key regulatory decision-making.

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

During this period, I never lobbied any lawmaker, and continuously consulted with the designated ethics official to identify any potential conflicts of interest.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes, to the best of my ability.

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

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

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

RESUMÉ OF MIGNON L. CLYBURN

Education

1980–1984—University of South Carolina, Columbia, SC
B.S. Business Administration
Banking & Finance and Economics

1976–1980—W. J. Keenan High School, Columbia, SC
General Diploma

Awards received

Community Service: Omega Psi Phi and Phi Beta Sigma Fraternities, Delta Sigma Theta and Sigma Gamma Rho Sororities, Mt. Zion and Morris Brown AME Churches, NCNW, UNCF, Moja Arts Festival, and The NAACP; Professional: Terry College of Business, Columbia Urban League, CEA, NATOA, WICT, and The National Hispanic Media Coalition

Work experience

2009 to Present, Commissioner, *Federal Communications Commission,* Washington, D.C.
1998–2009, Commissioner, Sixth Congressional District
2002–2004, Chairman, *South Carolina Public Service Commission,* Columbia, SC
1984–1998, Publisher, General Manager, *The Coastal Times Newspaper* Charleston, SC

Community activities

Served as a trustee of: The Trident Technical College Foundation, The Palmetto Project (secretary/treasurer), Columbia College Board of Visitors, SC Cancer Center Board and is a member of Links, Inc.; Served on the boards of: YWCA of Greater Charleston (president), Adventure Children's Museum, Reid House of Christian Service, Trident Urban League and Trident United Way as well as Charleston County Democratic Women (president); City of Charleston Site and Design, Charleston Area Arts Council; Women in Transition, and United Way Allocations Board; Was a member of the City of Columbia Reform and Restructuring Commission, Common Ground School Improvement Committee (SC Education Oversight Committee) and SC Great Friends to Kids (Adventure)

Professional memberships

Southeastern (past chair) and National Association of Regulatory Utility Commissioners (Utility Market Access Partnership, Audit Committee, Foundation Board member, Legislative Task Force and co-chair of Washington Action Committee); SC Energy Advisory Council; served as president of the Black Women Entrepreneurs, past treasurer of the SC Coastal Association of Black Journalists; and a graduate of the South Carolina Executive Institute

Senator KERRY. Thank you very much, Ms. Clyburn.

Dr. Wright, as I mentioned earlier, I have to leave, and I didn't want you to think I'm leaving because we've reached you, or something. I had a 3 o'clock; it's now past that. Senator Boxer is now going to preside, and I thank you for your understanding.

Dr. WRIGHT. Thank you.

Senator KERRY. Appreciate it.

Senator Boxer.

Senator BOXER [presiding]. Thank you.

Dr. Wright?

STATEMENT OF DR. JOSHUA D. WRIGHT, NOMINEE TO BE A COMMISSIONER AT THE FEDERAL TRADE COMMISSION

Dr. WRIGHT. Senator Boxer, Senator Kerry, Ranking Member Hutchison, and members of the Committee, I'm deeply honored to have been nominated by President Obama to serve as a Commissioner of the Federal Trade Commission, and grateful to this committee for considering my appointment.

I'd also like to recognize and express my gratitude to Chairman Leibowitz and Commissioners Rosch, Brill, and Ohlhausen, for being here today. If confirmed, I very much look forward to working with them.

Finally, I'd also like to introduce some members of my family: my wife, Anhvinh; my children, James and Ella; my parents, Nelson and Sandy Wright; my uncle, George Cary, a former Deputy Director in the Bureau of Competition during the Clinton administration; my aunt, Marlene Cary, and my cousin, Alex Cary.

I profoundly respect the Federal Trade Commission as an institution, its role in protecting markets and consumers, and its mission in ensuring the effective operation of markets. The Commission has earned its reputation as the world's premiere competition and consumer protection agency.

If confirmed as Commissioner, this would mark my fourth opportunity to serve the agency. My experience with the Commission began as a 20-year-old intern in the Bureau of Economics. One year later, I served as an intern in the Bureau of Competition. Since then, my education, research, and professional development, as both a lawyer and an economist, have focused largely upon the economic and legal aspects of competition and consumer protection regulation. In 2007, I rejoined the Commission as its inaugural Scholar-in-Residence before returning to George Mason University School of Law.

My experiences at the Commission, and my academic work, have focused on protecting consumers through the careful and thoughtful application of the Commission's many tools, rigorous legal and economic analysis, and objective evaluation of economic data. If confirmed, I intend to apply my knowledge and experience to the

Commission's mission of promoting consumer welfare and protecting consumers from unfair methods of competition and unfair and deceptive acts or practices. I further intend to help ensure the Commission takes full advantage of the wealth of expertise available to it in the form of its many talented lawyers and economists.

The Commission faces many challenges in carrying out its broad and fundamental mission of protecting consumers. One is to continue vigilant enforcement of competition and consumer protection laws where obviously harmful conduct is taking place. For example, the FTC has attacked unfair and deceptive practices in mortgage servicing, subprime credit, foreclosure rescue, and telemarketing robocalls, among other areas. I will support the Commission's continued vigilance in protecting consumers in these areas, if confirmed.

The Commission also faces pressing challenges in implementing its consumer protection and competition law efforts in high-tech environments. These environments present an important arena for the Commission to bring to bear its expertise for the benefit of consumers.

With respect to the Commission's consumer protection mission, these efforts include not only preventing fraudsters from preying upon consumers on the Internet, but also continue to help consumers protect their privacy without diminishing the benefits of competition and innovation. The Commission must also carefully analyze mergers and other new and creative business combinations and practices in high-tech markets to vigorously protect consumers from anticompetitive conduct without depriving them of the benefits of innovation.

Finally, the Commission must continue to play a leading role in the global competition and consumer protection communities. With over 100 jurisdictions around the world enforcing competition or consumer protection laws, resources spent to improve the analytical foundation of enforcement institutions here and abroad, and to strengthen cooperation with other enforcement institutions, are critical to further the Commission's fundamental mission. These efforts simultaneously develop sound policy at home as domestic agencies communicate with, and learn from, their overseas counterparts, and enhance our ability to exert a positive pro-consumer influence on the institutional design and policy decision of agencies abroad.

If I'm fortunate enough to be confirmed, I will work with my fellow commissioners, the agency staff, and members of this committee to help the Commission fulfill its mission of protecting consumers and invest in its future success.

I look forward to your questions.

[The prepared statement and biographical information of Dr. Wright follow:]

PREPARED STATEMENT OF JOSHUA D. WRIGHT, NOMINEE FOR COMMISSIONER, FEDERAL TRADE COMMISSION

Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, I am deeply honored to have been nominated by President Obama to serve as a Commissioner of the Federal Trade Commission and grateful to this Committee for considering my appointment.

I profoundly respect the Federal Trade Commission as an institution, its role in protecting consumers, and its mission in ensuring the effective operation of markets. The Commission has earned its reputation as the world's premiere competition and consumer protection agency. If confirmed as a Commissioner, this would mark my fourth opportunity to serve the agency. My experience with the Commission began as a 20 year old intern in the Bureau of Economics. One year later I served as an intern in the Bureau of Competition. Since then my education, research, and professional development as both a lawyer and an economist have focused largely upon the economic and legal aspects of competition and consumer protection regulation. In 2007 I rejoined the Commission as its inaugural Scholar-in-Residence before returning to George Mason University School of Law.

My experiences at the Commission and my academic work have focused on protecting consumers through the careful and thoughtful application of the Commission's many tools, rigorous legal and economic analysis, and objective evaluation of economic data. If confirmed, I intend to apply my knowledge and experience to the Commission's mission of promoting consumer welfare and protecting consumers from unfair methods of competition and unfair and deceptive acts or practices; I further intend to help ensure the Commission takes full advantage of the wealth of expertise available to it in the form of its many talented lawyers and economists.

The Commission faces many challenges in carrying out its broad and fundamental mission of protecting consumers. One is to continue vigilant enforcement of competition and consumer protection laws where obviously harmful conduct is taking place. For example, the FTC has attacked unfair and deceptive practices in mortgage servicing, subprime credit, foreclosure rescue, and telemarketing robocalls, among other areas. I will support the Commission's continued vigilance in protecting consumers in these areas, if confirmed.

The Commission also faces pressing challenges in implementing its consumer protection and competition law efforts in high-tech environments. These environments present an important arena for the Commission to bring to bear its expertise for the benefit of consumers. With respect to the Commission's consumer protection mission, these efforts include not only preventing fraudsters from preying upon consumers on the Internet but also continuing to help consumers protect their privacy without diminishing the benefits of competition and innovation. The Commission must also carefully analyze mergers and other new and creative business combinations and practices in high-tech markets to vigorously protect consumers from anticompetitive conduct without depriving them of the benefits of innovation.

Finally, the Commission must continue to play a leading role in the global competition and consumer protection communities. With over 100 jurisdictions around the world enforcing competition or consumer protection laws, resources spent to improve the analytical foundations of enforcement institutions here and abroad and to strengthen cooperation with other enforcement institutions are critical to further the Commission's fundamental mission. These efforts simultaneously develop sound policy at home—as domestic agencies communicate with and learn from their overseas counterparts—and enhance our ability exert a positive, pro-consumer influence on the institutional design and policy decisions of agencies abroad.

If I am fortunate enough to be confirmed, I will work with my fellow Commissioners, the agency's staff, and the members of this Committee to help the Commission fulfill its mission of protecting consumers and invest in its future success. I look forward to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Joshua Daniel Wright. Nickname: Josh.
2. Position to which nominated: Federal Trade Commissioner.
3. Date of Nomination: September 11, 2012.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: George Mason University School of Law 3301 N. Fairfax Drive Arlington, VA 22201.

5. Date and Place of Birth: January 20, 1977; San Diego, California.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Anhvinh Ngoc Wright, Special Education Teacher and Behavior Analyst, Fairfax County School District; children: James Douglas Wright (Age 5) and Ella Grace Wright (Age 3).

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

University of California at Los Angeles
Ph.D., Economics (2003)
JD (2002)
Attended 1998–2003

University of California at San Diego
BA, Economics (1998)
Attended 1995–1998

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

George Mason University School of Law
Professor of Law

University of Texas School of Law
Visiting Professor

Federal Trade Commission
Scholar in Residence

George Mason University School of Law
Assistant Professor

United States District Court for the Central District of California
Law Clerk to the Honorable James V. Selna

Latham and Watkins
Summer Associate (2001)

Jones Day
Summer Associate (2000, 2001)

Economic Analysis Corporation
Consultant

Federal Trade Commission
Honors Paralegal, Bureau of Competition

Federal Trade Commission
Intern, Bureau of Economics

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

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

Federal Trade Commission
Consultant (continuation of work for Chairman Kovacic)

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

Charles River Associates
Senior Consultant

Law and Economics Consulting Group
Consultant

International Center for Law and Economics
Consultant and Board Member

Express Scripts Inc.
Consultant

Internet Corporation for Assigned Names & Numbers
Consultant

Arlington Economics
Consultant

Family Winemakers of California
Consultant

Computer & Communications Industry Association

Consultant

Northwestern University
Consultant

Supreme Court Economic Review (George Mason University School of Law)
Co-Editor

American Bar Association, Section of Antitrust Law
Senior Editor, Antitrust Law Journal

My position as Senior Editor to the ABA's Antitrust Law Journal was uncompensated and did not involve any fiduciary duties.

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

American Bar Association
Member, 2003 to present.

American Bar Association, Section of Antitrust Law
Member, 2003 to present

Federalist Society
Member, 2008 to present

American Economic Association
Member, 2004 to present

Southern Economic Association, 2006 to present

International Society of New Institutional Economics
Member, 2004 to present

Mclean Swim & Tennis Association
Member, 2010 to present

American Law & Economics Association
Member, 2004 to present

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

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

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

Mitt Romney, $2,500 (February 2012).

I have not held office or rendered services to a state or national political party or elective committee during the same period.

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

Principal Investigator, Searle Center on Law, Regulation, and Economic Growth Civil Justice Institute Project on State Consumer Protection (Competitive Grant Award)

Co-Principal Investigator (with Bruce H. Kobayashi), Tilburg Law and Economics Center Grant Research Grant (Competitive Grant Award)

Runner-up, Jones Day Swope Antitrust Writing Prize

Departmental Teaching Assistant Award, UCLA Department of Economics

Institute for Humane Studies, Research Grant

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

Books and Book Chapters

ANTITRUST LAW IN PERSPECTIVE: CASES, CONCEPTS, AND PROBLEMS IN COMPETITION POLICY (with Andrew I. Gavil, William E. Kovacic, and Jonathan B. Baker) (forthcoming 3rd Edition)

Co-Editor, PIONEERS IN LAW AND ECONOMICS (with Lloyd R. Cohen) (2009)

Co-Editor, RESEARCH HANDBOOK IN THE LAW AND ECONOMICS OF THE FAMILY AND SOCIAL INSTITUTIONS (with Lloyd R. Cohen) (2011)

Co-Editor, COMPETITION POLICY AND PATENT LAW UNDER UNCERTAINTY: REGULATING INNOVATION (with Geoffrey A. Manne) (2011)

The Dramatic Rise of Consumer Protection Law, (with Eric Helland), in THE AMERICAN ILLNESS: ESSAYS ON THE RULE OF LAW (FR. Buckley, ed., Yale University Press, forthcoming 2012)

Benjamin Klein's Contribution to Law and Economics, in PIONEERS IN LAW AND ECONOMICS (Cohen and Wright, eds., Edward Elgar Publishing Limited, 2009)

Antitrust Analysis of Exclusive Dealing and Tying Arrangements (with Alden F. Abbott), in THE LAW AND ECONOMICS OF ANTITRUST (Keith N. Hylton ed., 2010)

The Chicago School, Transaction Cost Economics, and Antitrust, in THE ELGAR COMPANION TO TRANSACTION COST ECONOMICS (Peter Klein and Mike Sykuta, eds., 2009)

Antitrust, Multi-Dimensional Competition, and Innovation: Do We Have An Antitrust Relevant Theory of Competition Now? (with Geoffrey A. Manne), in COMPETITION POLICY AND PATENT LAW UNDER UNCERTAINTY: REGULATING INNOVATION (2011)

Intellectual Property and Standard Setting (with Bruce H. Kobayashi), in the American Bar Association HANDBOOK ON ANTITRUST ASPECTS OF STANDARD SETTING (2010)

Articles and Essays (By Subject Matter)

Law and Economics

Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty (with Douglas H. Ginsburg), 106 (3) NORTHWESTERN LAW REVIEW 1033 (2012)

The Law and Economics of Network Neutrality (with Thomas W. Hazlett), 45 INDIANA LAW REVIEW 767 (2012)

Alcohol, Antitrust, and the 21st Amendment: An Empirical Examination of Post and Hold Laws (with James C. Cooper), 32 INTERNATIONAL REVIEW OF LAW AND ECONOMICS 379 (2012)

The Economics of Slotting Contracts (with Benjamin Klein), 50 JOURNAL OF LAW AND ECONOMICS 421 (2007)

Antitrust Law and Economics

The Antitrust-Consumer Protection Paradox: Two Policies At War With Each Other, 121 YALE LAW IOURNAL 2216 (2012)

Dynamic Competition and the Limits of Antitrust Institutions (with Douglas H. Ginsburg), 78 (1) ANTITRUST LAW JOURNAL 1 (2012)

Do Expert Agencies Perform Better Than Generalist Judges? Evidence from the Federal Trade Commission (with Angela M. Diveley), forthcoming in JOURNAL OF ANTITRUST ENFORCEMENT (2012)

Misbehavioral Economics: The Case Against Behavioral Antitrust (with Judd E. Stone), 33 (4) CARDOZO LAW REVIEW 1517 (2012)

Abandoning Antitrust's Chicago Obsession: The Case for Evidence-Based Antitrust, 78 (1) ANTITRUST LAW JOURNAL 301 (2012)

The Limits of Antitrust and Patent Holdup: A Reply to Cary *et al.,* (with Bruce H. Kobayashi), forthcoming 78 (2) ANTITRUST LAW JOURNAL 701 (2012)

Moving Beyond Naïve Foreclosure Analysis, 19(5) GEORGE MASON LAW REVIEW 1163 (2012)

Antitrust Settlements: The Culture of Consent (with Douglas H. Ginsburg), forthcoming in CONCURRENCES (2012)

What Would Predatory Pricing Law Be Without John McGee? A Reply to Professor Leslie, forthcoming in 85 (3) SOUTHERN CALIFORNIA LAW REVIEW, POSTCRIPT (2012)

Still Rare Like A Unicorn? The Case of Behavioral Predatory Pricing (with Judd E. Stone), 8 JOURNAL OF LAW ECONOMICS AND POLICY 859 (2012)

Does Antitrust Enforcement In High Tech Markets Benefit Consumers? Stock Price Evidence From *FTC* v. *Intel,* 38 REVIEW OF INDUSTRIAL ORGANIZATION 387 (2011)

The Sound of One Hand Clapping: The 2010 Merger Guidelines and the Challenge of Judicial Adoption (with Judd E. Stone), 39 REVIEW OF INDUSTRIAL ORGANIZATION 154 (2011)

Google and the Limits of Antitrust: The Case Against the Case Against Google (with Geoffrey A. Manne), 34 HARVARD JOURNAL OF LAW & PUBLIC POLICY 171 (2011)

Is Antitrust Too Complicated for Generalist Judges? The Impact of Economic Complexity and Judicial Training on Appeals (with Michael Baye), 54 JOURNAL OF LAW AND ECONOMICS (2011)

Antitrust Sanctions (with Douglas H. Ginsburg), 6(2) COMPETITION POLICY INTERNATIONAL 3 (2010)

Antitrust Formalism is Dead! Long Live Antitrust Formalism!: Some Implications of *American Needle* v. *NFL* (with Judd E. Stone), 2009–10 CATO SUPREME COURT REVIEW 369 (2010)

Antitrust, Economics, and Innovation in the Obama Administration, GLOBAL COMPETITION POLICY (November 2009)

Can Bundled Discounting Increase Consumer Prices Without Excluding Rivals? (with Daniel A. Crane), 6 COMPETITION POLICY INTERNATIONAL 209 (2009)

An Evidence Based Approach to Exclusive Dealing and Loyalty Discounts, GLOBAL COMPETITION POLICY (July 2009)

Antitrust Pricing War: Congress v. the Court (with Geoffrey A. Manne), NEW FEDERAL INITIATIVES PROJECT (2009)

Overshoot the Mark? A Simple Explanation of the Chicago School's Influence on Antitrust, 5 COMPETITION POLICY INTERNATIONAL 179 (2009)

Antitrust Analysis of Category Management: *Conwood Co.* v. *U.S. Tobacco,* 17 SUPREME COURT ECONOMIC REVIEW 311 (2009)

Antitrust (Over-?) Confidence (with Thomas A. Lambert), 20(2) LOYOLA CONSUMER LAW REVIEW 219 (2008)

The Roberts Court and the Chicago School of Antitrust: The 2006 Term and Beyond, 3(2) COMPETITION POLICY INTERNATIONAL 25 (2007)

The Roberts Court's Antitrust Jurisprudence: The Chicago School Marches On, 8(4) ENGAGE 29 (2007)

Slotting Contracts and Consumer Welfare, 74(2) ANTITRUST LAW JOURNAL 439 (2007)

MasterCard's Single Entity Strategy, 12 HARVARD NEGOTIATION LAW REVIEW 225 (2006)

Antitrust Law and Competition for Distribution, 23 YALE JOURNAL ON REGULATION 169 (2006)

Sui Generis?: An Antitrust Analysis of Buyer Power in the United States and European Union (with Richard Scheelings), 39 AKRON LAW REVIEW 207 (2006)

Singing Along: A Comment on Goldberg and Muris on the Three Tenors, 1(3) REVIEW OF LAW AND ECONOMICS 4 (2005)

Vons Grocery and the Concentration-Price Relationship in Grocery Retail, 48 UCLA LAW REVIEW 743 (2001)

Intellectual Property & Antitrust

Innovation and The Limits of Antitrust (with Geoffrey A. Manne), 6(1) JOURNAL OF COMPETITION LAW AND ECONOMICS 153 (2010)

Patent Holdup, Antitrust and Innovation: Harness or Noose? (with Aubrey N. Stuempfle), 61 ALABAMA LAW REVIEW 559 (2010)

Reverse Payment Settlements and Upcoming Congressional Action (with Geoffrey A. Manne), NEW FEDERAL INITIATIVES PROJECT (2009)

Why the Supreme Court was Correct to Deny Certiorari in FTC v. Rambus, GLOBAL COMPETITION POLICY (March 2009, Release Two)

Federalism, Substantive Preemption, and Limits on Antitrust: An Application to Patent Holdup (with Bruce H. Kobayashi), 5 JOURNAL OF COMPETITION LAW AND ECONOMICS 469 (2009), reprinted in COMPETITION POLICY AND PATENT LAW UNDER UNCERTAINTY: REGULATION INNOVATION (with Geoffrey A. Manne) (Cambridge University Press, 2011)

Missed Opportunities in Independent Ink, 2005–06 CATO SUPREME COURT REVIEW 333 (2006)

Contracts and Contract Theory

Option Backdating and Why Executive Compensation is Not All About Norms, 2 CORPORATE GOVERNANCE LAW REVIEW 385 (2006) (with Geoffrey A. Manne)

Behavioral Law and Economics, Paternalism, and Consumer Contracts: An Empirical Perspective, 2 NYU JOURNAL OF LAW AND LIBERTY 470 (2007)

Consumer Protection

Are State Consumer Protection Acts Really Little FTC Acts? (with Henry N. Butler), 63 FLORIDA LAW REVIEW 163 (2010)

The Availability of Consumer Credit (with David S. Evans), 22 (3) LOYOLA CONSUMER LAW REVIEW 279 (2010)

Three Problematic Truths About the Consumer Financial Protection Agency Act of 2009 (with Todd J. Zywicki), 1 (12) LOMBARD STREET (September 2009)

How the Consumer Financial Protection Agency Act of 2009 Would Change the Law and Regulation of Consumer Financial Products (with David S. Evans), 2 BLOOMBERG LAW REPORTS: RISK AND COMPLIANCE (2009)

Others

Expanding FTC's Rulemaking and Enforcement Authority, NEW FEDERAL INITIATIVES PROJECT (2010)

The Constitutional Failure of Gang Databases, 2 STANFORD JOURNAL OF CIVIL RIGHTS AND CIVIL LIBERTIES 115 (2006)

Commentary

First Microsoft, now Google: Does the government have it in for consumers?, CNET NEWS (with Geoffrey Manne and BerM Szoka) (July 2, 2011)

Durbin's Antitrust Fantasies, THE WASHINGTON TIMES (with Todd Zywicki) (June 17, 2010)

The Return of "Big is Bad," THE DEAL MAGAZINE (with Keith N. Hylton and Geoffrey A. Manne) (May 26, 2009)

U.S. Antitrust Becomes More European, FORBES. COM (May 18, 2009) (with Keith N. Hylton and Geoffrey A. Manne)

Hell No, Don't Let Them Go!, CHICAGO TRIBUNE (May 8, 2008) (with Thomas W. Hazlett)

Other Publications

The Future of Law and Economics: A Discussion (with Henry G. Mantle)

GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 0835 (2008)

An Antitrust Analysis of the Federal Trade Commission's Complaint Against Intel, GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 10–27, ICLE ANTITRUST AND COMPETITION POLICY WHITE PAPER SERIES (2010)

A Response to Professor Levitin on the Effect of the Consumer Financial Protection Agency Act of 2009 on Consumer Credit (with David S. Evans) GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 09–56 (2009)

Comment on the Proposed Update on the Horizontal Merger Guidelines: Accounting for Out-of-Market Efficiencies, GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 10–38 (2010)

Comment on the Intellectual Property, Concentration and the Limits of Antitrust in the Biotech Seed Industry (with F. Scott Kieff, Geoffrey A. Manne, and Michael E. Sykuta) LEWIS & CLARK LAW SCHOOL LEGAL STUDIES RESEARCH PAPER NO. 2010–9, GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 10–24 (2009)

A First Principles Approach to Antitrust Enforcement in the Agricultural Industry (with Geoffrey A. Manne) 5 CPI ANTITRUST CHRONICLE, LEWIS & CLARK LAW SCHOOL LEGAL STUDIES RESEARCH PAPER NO. 2010–15, GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 10–31 (2010)

Defining and Measuring Search Bias: Some Preliminary Evidence, International Center for Law & Economics, GEORGE MASON LAW & ECONOMICS RESEARCH PAPER NO. 12–14 (2011)

Working Papers

Tastes Great, Less Filling: The Effects of Contract Regulation on Beer Consumption (with Jonathan Klick)

Grocery Bag Bans and Foodborne Illnesses (with Jonathan Klick)

Antitrust Courts: Specialists Versus Generalists (with Douglas H. Ginsburg)

The Goals of Antitrust: Why Welfare Trumps Choice (with Douglas H. Ginsburg)

Blog Posts

I regularly contribute to a group blog at *Truthonthemarket.com,* which focuses upon business law and economics. The regular contributors of the blog are a number of law professors and economists. Since I joined the blog in 2005, I have posted over 500 items which are each publicly available.

Some blog posts have been republished at other websites. For example, a number of my posts at Truth on the Market are republished at Technology Liberation Front. I have also provided "guest" commentary on legal blogs, such as *Conglomerate.org* and the PennReg Blog. Those posts are available here: *http://www.theconglomerate.org/wright.html* and here: *http://www.law.upenn.edu/blogs/regblog/2012/04/do-expertagencies-outperform-generalist-judges.html.*

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

May 26, 2011. Oral and Written Testimony, Hearing Before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Intellectual Property, Competition and the Internet on "How Will the Proposed Merger Between AT&T and T-Mobile Affect Wireless Telecommunications Competition."

March 29, 2012. Oral and Written Testimony, Hearing Before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Intellectual Property, Competition and the Internet on "HR. 1946, the Preserving Our Hometown Independent Pharmacies Act of 2011."

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

My history with the Federal Trade Commission begins in the summer of 1997, at age 20, when I interned in the Bureau of Economics while an undergraduate at the University of California, San Diego. The next summer I interned in the Bureau of Competition before beginning my studies at UCLA School of Law. Since then my studies and professional development have focused largely upon issues involving the law and economics of regulation and, more specifically, the economic and legal aspects of competition and consumer protection regulation.

When I returned to the Federal Trade Commission as its inaugural Scholar-in-Residence from 2007–2008, I worked closely with two former Chairpersons—Deborah Majoras and William Kovacic—and learned from them how to effectively harness the Commission's expertise and resources to further its competition and consumer protection missions and to promote consumer welfare. My experience serving Commissioners, the Bureau of Economics, and the Bureau of Competition has given me a multi-faceted appreciation for the internal operations of the Commission, how economics informs the Commission's application of competition and consumer protection law, and how empirical evidence can best be harnessed to achieve the Commission's goals and overarching mission of protecting consumers.

In addition to my experience as a law professor specializing in antitrust, I am also a trained economist and regularly publish research on a variety of topics within both industrial organization and antitrust economics. The Commission has had three Ph.D. economists as Commissioners in the past—all during the 1980s: Jim Miller, George Douglas, and Dennis Yao. Antitrust analysis increasingly employs complex economic models and statistical methods to better understand the competi-

tive effects of business arrangements and to design policies that better serve consumers. These increasingly sophisticated approaches to antitrust analysis are also increasingly technical; harnessing these methods for consumer welfare requires training to properly understand and implement. This requires greater coordination among the Commission, the Bureau of Competition, the Bureau of Consumer Protection, and the Bureau of Economics to make the best use of the Commission's high quality staff of economists.

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

The Commission's primary responsibilities include setting agency priorities and managing agency resources to achieve those goals in an efficient manner. Proper management and accounting controls, as critical to the Commission's overall mission, are therefore squarely in the ambit of each Commissioner's responsibility; I will endeavor to deploy my expertise and all available resources to ensure the efficient operation of the agency.

I do not have experience managing a large organization.

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

The Commission's first challenge is to protect consumers and to maximize consumer welfare—the unifying obligation underlying both its competition and consumer protection enforcement actions. This challenge requires using Commission expertise to identify both problems whose solution will provide consumers the greatest return on Commission resources as well as effective enforcement strategies to resolve those problems. The Commission's most pressing challenge in identifying and optimizing its enforcement efforts in the modern economy involves competition and consumer protection in high-tech markets; these environments are typically characterized by dynamic competition and innovation, as well as complex business arrangements involving intellectual property rights.

The second challenge arises in response to the fact that there are now roughly 120 jurisdictions in the world with competition laws, with approximately 90 of those appearing since 1990. The Commission has a long history of investing significant resources into facilitating cooperation and coordination among jurisdictions and agencies both around the world and here in the United States. These efforts are critical to ensuring the development of sound competition policy at home—as domestic agencies communicate with and learn from their overseas counterparts—as well as maximizing the ability of U.S. agencies to exert a positive and pro-consumer influence on the institutional design and policy decisions of agencies abroad.

The third challenge facing the Commission is making the necessary investments to ensure that it continues to develop the human capital within the agency to maintain its well-deserved reputation and to achieve success. That reputation is attributable to its quality staff of attorneys, economists, and administrative professionals. Many, if not all of the challenges facing competition and consumer protection enforcement efforts, benefit substantially from the Commission's efforts to nurture and to further develop economic expertise, especially as applied to particular high-tech sectors, particular technologies and industries, and the law.

B. POTENTIAL CONFLICTS OF INTEREST

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

I am the co-author of two law casebooks currently under revision and will, under contracts with the book publishers, receive royalties for any future sales after publication. If confirmed, I will sever both arrangements.

I will continue to participate in an employee benefit plan (403(b)) through University of Texas. My former employer does not make contributions to the plan.

If confirmed, I will take an unpaid leave of absence from George Mason University during my government service.

I will continue to participate in an employee benefit plan (George Mason ORP—defined contribution plan) through George Mason University. If confirmed, my employer will not make contributions to the plan while I am on unpaid leave of absence.

I will continue to participate in an employee benefit plan (GMU Retirement—defined contribution plan). If confirmed, my employer will not make contributions to the plan while I am on unpaid leave of absence.

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

I intend to obtain unpaid leave at George Mason University School of Law during my government service. If confirmed, I will sever all ongoing relationships with the following entities: Charles River Associates; the International Center for Law & Economics; Express Scripts, Inc.; Arlington Economics; and, the Internet Corporation for Assigned Names & Numbers.

If confirmed, I will also resign from my position on the board of directors of the International Center for Law & Economics.

If confirmed, I will resign from my position as Co-Editor for the Supreme Court Economic Review (George Mason University School of Law) and as Senior Editor of the Antitrust Law Journal (American Bar Association).

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to the Committee. I am not aware of any other conflicts of interest.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identifi potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other conflicts of interest. I plan to remain a member of the American Bar Association but will resign as Senior Editor of the Antitrust Law Journal if confirmed.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

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

Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official and that has been provided to this Committee.

C. LEGAL MATTERS

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

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

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

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

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

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

D. RELATIONSHIP WITH COMMITTEE

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

If confirmed as a Federal Trade Commissioner, I would work diligently with the Chairman and my fellow Commissioners to do so.

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

If confirmed as a Federal Trade Commissioner, I would work diligently with the Chairman and my fellow Commissioners to do so.

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

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

RESUMÉ OF JOSHUA D. WRIGHT

Academic Appointments, Positions and Affiliations

Professor of Law, George Mason University School of Law

- Courses: Contracts I, Contracts II, Economic Foundations of Legal Studies, Antitrust, Advanced Antitrust, Intellectual Property and Antitrust

Professor (Courtesy), George Mason University Department of Economics (2009–Present)

Associate Professor, George Mason University School of Law (August 2010–May 2011)

Faculty, GMU Law and Economics Center Judicial Education Program

- Economic Institute for Judges (microeconomics and quantitative methods to state and Federal judges)
- Case Analysis Seminars (with the Honorable Douglas H. Ginsburg)
- Co-Organizer and Instructor, American Bar Association & Mason Judicial Education Program Institute on Antitrust Law and Economics
- Co-Organizer and Instructor, Empirical and Experimental Methods Workshops for Law Professors
- Economics Institute for Law Professors

Assistant Professor, George Mason University School of Law (January 2005–August 2010)

Visiting Assistant Professor, George Mason University School of Law (2004)

Visiting Professor, University of Texas School of Law (August 2008–May 2009)

Scholar in Residence, Federal Trade Commission (January 2007–July 2008)

Senior. Fellow, George Mason University Information Economy Project

Research Director, George Mason Law and Economics Center Searle Civil Justice Institute

Education

University of California, Los Angeles, Department of Economics (1999–2003)

- Ph.D., Economics (2003)

University of California, Los Angeles, School of Law (1998–2002)

- J.D. (May 2002)
- Managing Editor, UCLA Law Review

University of California, San Diego (1995–1998)

- B.A., Economics (June 1998)

Patrick Henry High School, San Diego (1992–1995)

Research Interests

- Antitrust Law and Economics
- Industrial Organization
- Consumer Protection
- Law and Economics of Regulation

- Intellectual Property
- Law and Economics of Contracts

Other Teaching Experience

Adjunct Professor, Pepperdine University Graduate School of Public Policy (2003)

- Graduate course in Law and Economics

Lecturer, UCLA Department of Economics

- Undergraduate course in Law and economics

Teaching Assistant, UCLA Department of Economics

- Introductory, intermediate, advanced, and graduate microeconomics courses
- Departmental Teaching Assistant Award (2001, 2002, 2003)

Honors, Grants and Awards

Principal Investigator, Searle Center on Law, Regulation, and Economic Growth Civil Justice Institute Project on State Consumer Protection

Co-Principal Investigator (with Bruce H. Kobayashi), Tilburg Law and Economics Center Research Grant

Select Recent and Forthcoming Publications

The Antitrust-Consumer Protection Paradox: Two Policies At War With Each Other, 121 YALE LAW JOURNAL 2216 (2012)

Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty (with Douglas H. Ginsburg), 106 (3) NORTHWESTERN LAW REVIEW 1033 (2012)

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Antitrust Settlements: The Culture of Consent (with Douglas H. Ginsburg), forthcoming CONCURRENCES (2012)

Abandoning Antitrust's Chicago Obsession: The Case for Evidence-Based Antitrust, 78 (1) ANTITRUST LAW JOURNAL 301 (2012)

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Books and Book Chapters

ANTITRUST LAW IN PERSPECTIVE: CASES, CONCEPTS, AND PROBLEMS IN COMPETITION POLICY (with Andrew I. Gavil, William E. Kovacic, and Jonathan B. Baker) (forthcoming 3rd Edition)

Co-Editor, PIONEERS IN LAW AND ECONOMICS (with Lloyd R. Cohen) (2009)

Co-Editor, RESEARCH HANDBOOK IN THE LAW AND ECONOMICS OF THE FAMILY AND SOCIAL INSTITUTIONS (with Lloyd R. Cohen) (2011)

Co-Editor, COMPETITION POLICY AND PATENT LAW UNDER UNCERTAINTY: REGULATING INNOVATION (with Geoffrey A. Manne) (2011)

The Dramatic Rise of Consumer Protection Law (with Eric Helland), in THE AMERICAN ILLNESS: ESSAYS ON THE RULE OF LAW (F.H. Buckley, ed., Yale University Press, forthcoming 2012)

Benjamin Klein's Contribution to Law and Economics, in PIONEERS IN LAW AND ECONOMICS (Cohen and Wright, eds., Edward Elgar Publishing Limited, 2009)

Antitrust Analysis of Exclusive Dealing and Tying Arrangements (with Alden F. Abbott), in THE LAW AND ECONOMICS OF ANTITRUST (Keith N. Hylton ed., 2010)

The Chicago School, Transaction Cost Economics, and Antitrust, in THE ELGAR COMPANION TO TRANSACTION COST ECONOMICS (Peter Klein and Mike Sykuta, eds., 2009)

Antitrust, Multi-Dimensional Competition, and Innovation: Do We Have An Antitrust Relevant Theory of Competition Now? (with Geoffrey A. Manne), in COMPETITION POLICY AND PATENT LAW UNDER UNCERTAINTY: REGULATING INNOVATION (2011)

Intellectual Property and Standard Setting (with Bruce H. Kobayashi), in the American Bar Association HANDBOOK ON ANTITRUST ASPECTS STANDARD SETTING (2010)

Articles and Essays (By Subject Matter)

Law and Economics

Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty (with Douglas H. Ginsburg), 106 (3) NORTHWESTERN LAW REVIEW 1033 (2012)

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Why the Supreme Court was Correct to Deny Certiorari in FTC v. Rambus, GLOBAL COMPETITION POLICY (March 2009, Release Two)

Federalism, Substantive Preemption, and Limits on Antitrust: An Application to Patent Holdup (with Bruce H. Kobayashi), 5 JOURNAL OF COMPETITION LAW AND ECONOMICS 469 (2009), reprinted in COMPETITION POLICY AND PATENT LAW UNDER UNCERTAINTY: REGULATION INNOVATION (with Geoffrey A. Marine) (Cambridge University Press, 2011)

Missed Opportunities in Independent Ink, 2005–06 CATO SUPREME COURT REVIEW 333 (2006)

Contracts and Contract Theory

Option Backdating and Why Executive Compensation is Not All About Norms (with Geoffrey A. Manne), 2 CORPORATE GOVERNANCE LAW REVIEW 385 (2006)

Behavioral Law and Economics, Paternalism, and Consumer Contracts: An Empirical Perspective, 2 NYU JOURNAL OF LAW AND LIBERTY 470 (2007)

Consumer Protection

Are State Consumer Protection Acts Really Little FTC Acts? (with Henry N. Butler), 63 FLORIDA LAW REVIEW 163 (2010)

The Effect of the Consumer Financial Protection Agency Act of 2009 on the Availability of Consumer Credit (with David S. Evans), 22 (3) LOYOLA CONSUMER LAW REVIEW 279 (2010)

Three Problematic Truths About the Consumer Financial Protection Agency Act of 2009 (with Todd J. Zywicki), 1 (12) LOMBARD STREET (September 2009)

How the Consumer Financial Protection Agency Act of 2009 Would Change the Law and Regulation of Consumer Financial Products (with David S. Evans), 2 BLOOMBERG LAW REPORTS: RISK AND COMPLIANCE (2009)

Others

Expanding FTC's Rulemaking and Enforcement Authority, NEW FEDERAL INITIATIVES PROJECT (2010)

The Constitutional Failure of Gang Databases, 2 STANFORD JOURNAL OF CIVIL RIGHTS AND CIVIL LIBERTIES 115 (2006)

Commentary

First Microsoft, now Google: Does the government have it in for consumers?, CNET NEWS (with Geoffrey Marine and BerM Szoka) (July 2 2011)

Durbin's Antitrust Fantasies, THE WASHINGTON TIMES (with Todd Zywicki) (June 17, 2010)

The Return of "Big is Bad," THE DEAL MAGAZINE (with Keith N. Hylton and Geoffrey A. Marine) (May 26, 2009)

U.S. Antitrust Becomes More European, FORBES.COM (with Keith N. Hylton and Geoffrey A. Marine) (May 18, 2009)

Hell No, Don't Let Them Go!, CHICAGO TRIBUNE (with Thomas W. Hazlett) (May 8, 2008)

Working Papers

Tastes Great, Less Filling: The Effects of Contract Regulation on Beer Consumption (with Jonathan Klick)

Grocery Bag Bans and Foodborne Illnesses (with Jonathan Klick)

Antitrust Courts: Specialists Versus Generalists (with Douglas H. Ginsburg)

The Goals of Antitrust: Why Welfare Trumps Choice (with Douglas H. Ginsburg)

Research Projects in Progress

Causal Inference in Antitrust Event Studies (with Jonah Gelbach and Jonathan Klick)

Academic Presentations

Do Expert Agencies Perform Better Than Generalist Judges? Evidence from the Federal Trade Commission

Law and Society Annual Meetings (June 2012)

George Mason University Levy Workshop in Law and Liberty (February 2012)

George Mason University School of Law FTC Conference (October 2011)

State Regulation of Alcohol Distribution: The Effects of Post and Hold Laws on Output and Social Harms

Southern Economic Association Meetings (November 2012)

George Washington University Department of Economics (March 2012)

American Law and Economics Association Annual Meeting (May 2011)

Conference on Empirical Legal Studies (November 2010)

United States Department of Justice Antitrust Division (October 2010)

George Mason University School of Law Levy Workshop (September 2010)

Washington University at St. Louis Law and Economics Workshop (September 2010)

Behavioral Economics, Law, and Liberty

Mont Pelerin Society Annual Meetings (October 2010)

George Mason University School of Law (September 2010)

Misbehavioral Economics: The Case Against Behavioral Antitrust

Canadian Law and Economics Association Annual Meeting (October 2010)

Antitrust Sanctions

American Law and Economics Association Annual Meeting (May 2010)

Is Antitrust Too Complicated for Generalist Judges? The Impact of Economic Complexity and Judicial Training on Appeals

Southern Economic Association Annual Meeting (November 2010)

Georgetown University Law and Economics Workshop (October 2009)

Washington University at St. Louis Law and Economics Workshop (October 2009)

American Law and Economics Association Meetings (May 2009)

George Mason University Economics Department Public Choice Seminar (April 2009)

Stanford Law and Economics Workshop (January 2009)

University of Texas Law and Economics Workshop (December 2008)

UCLA Law and Economics Workshop (September 2008)

Northwestern University Law and Economics Workshop (September 2008)

Federalism, Substantive Preemption, and Limits on Antitrust: An Application to Patent Holdup

Tilburg Law and Economics Center (December 2008)

George Mason/Microsoft Conference on the Law and Economics of Innovation (May 2008)

Duke University Law School Intellectual Property Symposium (February 2008)

The Effects of Contract Regulation in the Alcoholic Beverage Industry

Southern Economic Association Annual Meeting (November 2007)

Antitrust, Multi-Dimensional Competition, and Innovation: Do We Have An Antitrust Relevant Theory of Competition Now?

George Mason/Microsoft Conference on the Law and Economics of Innovation (May 2007)

The Antitrust Law and Economics of Category Management

American Law & Economics Association Annual Meeting (May 2004)

The Economics of Slotting Contracts

Silicon Flatirons New Institutional Economics Conference (June 2009)

Peking University Conference on Chinese Anti-Monopoly Law (October 2007)

American Law & Economics Association 2005 Annual Meeting (May 2005)

International Society of New Institutional Economics 2004 Annual Meeting (September 2004)

George Mason University Law School Levy Workshop (March 2004)

Slotting Contracts and Consumer Welfare

First Annual Conference on Empirical Legal Studies (October 2006)

Southern Economic Association Annual Meeting (September 2006)

Southeastern Association of Law Schools Annual Meeting (July 2006)

American Law & Economics Association 2006 Annual Meeting (May 2006)

International Industrial Organization Conference (April 2006)

George Mason University Law School Levy Workshop (March 2006)

University of Texas Law School Center for Law and Economics (January 2006)

Behavioral Law and Economics, Paternalism, and Consumer Contracts: An Empirical Perspective

NYU Journal of Law and Liberty Symposium (October 2006)

The Roberts Court and the Chicago School of Antitrust: The 2006 Term and Beyond

William S. Boyd School of Law, UNLV (April 2008)

University of Missouri-Columbia School of Law (February 2008)

Conferences and Testimony

Panelist, Second Annual George Mason LEC Conference on Competition, Search, and Social Media (May 2012)

Panelist, Federalist Society Debate on Google and Antitrust at Columbia Law School (January 2012)

Panelist, AALS Annual Meeting: Behavioral Economics and Antitrust (January 2012)

Panelist, George Mason University Law and Economics Center Conference on The Law and Economics of Search Engines and Online Advertising (June 2011)

Panelist, United States House of Representatives Committee on the Judiciary Subcommittee on Intellectual Property, Competition and the Internet Hearing on "How Will the Proposed Merger Between AT&T and T-Mobile Affect Wireless Telecommunications Competition?" (May 2011)

Panelist, The FCC's Wireless Competition Report: A Preview (May 2011)

Panelist, George Mason University Law and Economics Center Conference on Behavioral Economics and the Consumer Financial Protection Bureau (March 2011)

Panelist, The Federalist Society Program on the FTC and The Internet (January 2011)

Panelist, The Federalist Society Program on Regulation of the Internet (December 2010)
Panelist, Stanford/Hoover Conference on Patents, Innovation and Business (June 2010)
Panelist, DOJ/FTC Proposed Merger Guidelines Workshop (January 2010) Panelist, LECG Consumer Protection and Antitrust Conference (October 2009)
Panelist, Technology Policy Institute Conference on High-Tech Antitrust (October 2009)
Panelist, SEALS Empirical Legal Research Workshop (August 2009)
Panelist, ICANN Workshop on Economic Analysis of Vertical Separation for New gTLDs (June 2009)
Panelist, Cato Institute Program on Antitrust in the New Administration (June 2009)
Panelist, FTC Workshop on Resale Price Maintenance (May 2009)
Panelist, Searle Center Conference on Antitrust Law and Economics (September 2008)
Panelist, FTC at 100 Conference (September 2008)
Panelist, Federalist Society Conference on Intellectual Property (July 2008)
Panelist, SIEPR/Hoover Institution Conference on the Modernization of Antitrust (May 2008)
Panelist, Searle Center Research Roundtable on the Theory of the Firm (March 2008)
Panelist, Searle Center Research Roundtable on the Law and Economics of Innovation (January 2008)
Panelist, Searle Center Conference on The End of the Microsoft Consent Decree (November 2007)
Panelist, DOJ/FTC Hearings on Sherman Act Section 2 and Single Firm Conduct (November 2006)
Panelist, George Mason Law Review Fall 2006 Antitrust Symposium (September 2006)

Professional Activities

Co-Director, Robert A. Levy Fellowship in Law & Liberty at George Mason University Affiliate, International Center for Law and Economics in Honor of Armen Alchian
Research Director, Searle Civil Justice Institute, George Mason Law and Economics Center
Co-Editor, Supreme Court Economic Review (Volume 20-present)
Senior Editor, *Antitrust Law Journal*
Associate Editor, *International Review of Law and Economics*
Referee, *Journal of Law and Economics, American Law & Economic Review, Review of Law and Economics; Supreme Court Economic Review, Review of Industrial Organization, Journal of Legal Studies, Yale Law Journal, Harvard Law Review*
Contributor, *Truth on the Market* (a blog dedicated to academic commentary on law, business, and economics)

Professional Experience

Senior Consultant, Charles Rivers Associates, Inc. (October 2009–Present)
Consultant, Federal Trade Commission (July 2008-April 2009)
Law Clerk to the Honorable James V. Selna, U.S. District Court for the Central District of California (2003–2004)
Consultant, Economic Analysis, LLC (1998–2002)
Summer Associate, Latham and Watkins (2001)
Summer Associate, Jones Day Reavis & Pogue (2000 and 2001)
Honors Paralegal, Federal Trade Commission, Bureau of Competition (1998) Intern, Federal Trade Commission, Bureau of Economics (1997)

Affiliations and Memberships

International Industrial Organization Society
American Economics Association
Southern Economic Association
International Society of New Institutional Economics
American Law and Economics Association
Federalist Society
California Bar Association
American Bar Association

Senator BOXER. Thank you.

Ms. Trottenberg, I just really need a "yes" or a "no" to this question. We're moving forward with MAP–21. Will you commit to coordinating closely with regional, State, and local transportation authorities to ensure that the Department provides clear and consistent Federal guidance, while also allowing sufficient flexibility to accommodate the needs of each local community?

Ms. TROTTENBERG. Yes.

Senator BOXER. Thank you.

Ms. Clyburn, I'm going to get you a letter—I don't need an answer now; I'm going to—we're going to hold the record open. Nine of us just sent a letter to the Chairman of the FCC expressing our concern about maintaining the diversity of ownership—of media ownership. And there are a lot of committee chairs on this: Leahy, Boxer, Harkin—actually, Bernie Sanders circulated this letter—Patty Murray, Ron Wyden, others.

So, the question that I want you to answer is how you believe—what your belief is about maintaining that diversity. And we're asking that the FCC not proceed with its proposed rule changes in media ownership without providing clear evidence-based response to our concerns. So, rather—because it's such a long subject, would you do us the honor and privilege of answering that question as we keep this record open?

Ms. CLYBURN. Thank you, Senator, for this ability to express myself.

You may know, by my background, that I spent 14 years as a general manager and publisher of a weekly newspaper in Charleston, South Carolina, called The Coastal Times. So, diversity in media, those types of issues——

Senator BOXER. Good.

Ms. CLYBURN.—are what I lived and breathed for a number of——

Senator BOXER. Good.

Ms. CLYBURN.—years.

Senator BOXER. Good.

Ms. CLYBURN. So, I commit to you my full——

Senator BOXER. Good.

Ms. CLYBURN.—participation. And I also would like you to know, in that particular proceeding, that we—by my request, we've extended the comment period for 30 days.

Senator BOXER. Excellent.

Ms. CLYBURN. And so, the public-interest groups and all others interested will have a more robust opportunity to——

Senator BOXER. Well, I——

Ms. CLYBURN.—engage.

Senator BOXER.—will pass this on to my colleagues, and we will look forward to your response.

And, Dr. Wright, welcome. I have some issues with your —with some of your statements, so I'm going to be very straightforward and give you a chance to respond.

You know that the FTC's mission is to, quote, "prevent business practices that are anticompetitive or deceptive or unfair to consumers, and to enhance informed consumer choice and public understanding of the competitive process."

Now, you have written some things that give me pause, and concern me. As one example, you write that the Consumer Financial Protection Bureau's agenda was, quote, "aggressive and dangerous," and, quote, "that its existence is likely to do more harm than good for consumers."

Do you—you know, what concerns me is your criticism of the mission. So, can you—you want to try to explain why you think it's "dangerous and aggressive"? Could you explain——

Dr. WRIGHT. Absolutely.

Senator BOXER.—why you feel it's "dangerous and aggressive"?

Dr. WRIGHT. Absolutely. I appreciate the opportunity to answer the question.

In my academic writing, I had written about the earlier version of the CFPA, prior to the—what was ultimately passed through the CFPB. In those articles, I had analyzed what was put forth in a series of academic articles about being the intellectual basis for the CFPB. Much of that was to do with what's known as the "behavioral economics literature." It's an area in which I have some expertise. I was concerned that some of the extensions of both the theory and evidence that was in the empirical literature in the economic space being extended in a manner inconsistent with the body of actual economic knowledge that we had. I expressed those concerns. They largely had to do with——

Senator BOXER. Do you still have those concerns, that the agenda was "aggressive and dangerous," the Consumer Financial Protection Bureau's agenda—that's what I'm trying to get at—and that "the existence of it is likely to do more harm than good for consumers"?

Dr. WRIGHT. No, I don't have that——

Senator BOXER. OK. So, let's move on. You don't stand by that anymore, those comments.

Dr. WRIGHT. Those comments were never about the existing agency.

Senator BOXER. OK. All right. That's important.

But, here, in 2012, you wrote that the FTC—now, you're—you want to be part of the FTC—you wrote that the FTC's administrative review of complex litigation in the antitrust context does not produce better results than litigation handled by Article III courts. You've criticized the Commission, arguing it's been hampered by—and I quote you—"a history and pattern of appointments evidencing a systematic failure to meet expectations."

So, these comments seem to indicate that you doubt the FTC's mission. And I just always am interested in why you would want to be a commissioner on a Commission that you say has a pattern—"a history and pattern of appointments evidencing a systematic failure to meet expectations."

Dr. WRIGHT. I'm happy to clarify those comments.

Senator BOXER. OK.

Dr. WRIGHT. First, I believe greatly in the Commission's fundamental mission of protecting consumers. These are issues that I've been working on, as an academic, in practice, and at the Commission, since I was 20 years old.

That particular article had to do with a highly contentious issue in the competition space to do with the Commission's use of Section

5, Unfair Methods of Competition. One justification for using Section 5, Unfair Methods of Competition, relies on the notion that the Commission, on average, has greater expertise and greater facility to handle complex antitrust cases than generalist Article III judges. That debate usually takes place without much in the way of empirical debate. That paper was an attempt to inject one particular empirical view by comparing decisions of District Court judges with commissioners, both appealed to Federal Courts of Appeal, to evaluate how those cases—a particular subset of cases, not the entire mission of the Federal Trade Commission—how those cases were faring in the Federal Courts.

I think that there's a consensus view, in antitrust circles, that the Commission's use of its Section 5 Unfair Methods of Competition authority, to be distinguished from the clear cases where the Commission is preventing consumer harm in areas such as consumer protection, fraud, deception, and so forth—that, in this one subset of areas, the Commission's reliance on expertise was not showing up empirically, in terms of differences with cases with District Court judges.

Senator BOXER. OK. Well, I'm going to ask you to follow up, because we—I'm just going to have one more question, and then we're going to turn to my colleagues. But, you know, I don't—I didn't hear you explain what I asked you about. So, I—it may be my problem; I'm not a legal expert, but—so, we'll work together to see if we can get some more detailed answers on that question.

Now, I don't know—I didn't hear you say you'd be recusing yourself from certain matters—did I miss that, Brian? All right—because of some of your work that's been paid for by corporate interests. So, have any papers you've written been funded by entities with matters before the FTC? Would you submit a list of the sponsors of your work and the organizations with which you're affiliated? And would it be your intent to recuse yourself where you've had those relationships?

Dr. WRIGHT. Absolutely, I can—my—all financial relationships through consulting or through research grant provided by third-party entities have been disclosed to the Commission and to the Committee. I will recuse myself, for instance, in law enforcement matters pertaining to Google, consistent with the President's ethics pledge, for a 2 year period. Also, in all other appropriate cases——

Senator BOXER. OK.

Dr. WRIGHT.—where potential conflicts are issued, I will consult the legal ethics officials at the Commission. I take my ethical requirements and obligations very seriously, and will consult advice from the legal ethics officials at the FTC, and recuse, where appropriate.

Senator BOXER. I have no doubt that you would do that, but I would like you to do that now, and sit with them, and submit a list to this committee. We need to know if we are looking at someone who's going to be able to participate—I don't know the extent to which you've been hired by these corporate folks, and it may not be a long list. So, if you wouldn't mind, if you could do that, before.

And I'll withhold—I have a couple of more questions, but Senator Schumer is here, and we all anticipated your arrival.

And I want you to know, before you came, we gave the most glowing introduction of Polly. But, go ahead.

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

Senator SCHUMER. Well, thank you, Madam Chair. And I'll be very, very brief.

I ask unanimous consent my statement be read——

Senator BOXER. Without objection——

Senator SCHUMER.—into the record.

Senator BOXER.—so ordered.

[The prepared statement of Senator Schumer follows:]

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

Good afternoon everyone and I want to thank you, Chairman Rockefeller, Ranking Member Hutchison, and all the members of this committee for allowing me to speak here today. I know we are pressed for time so I will try to keep things brief.

I am so pleased to be able introduce a former member of my staff, and a good friend, Polly Trottenberg to this committee.

President Obama has seen Polly's work as Assistant Secretary for Transportation Policy at the Department of Transportation, and he simply could not have made a better choice than for her to continue that work as Under Secretary for Policy.

Polly possesses the rare combination of talent, intellect, experience, and dedication that made her not only an outstanding legislative director and public servant, but also a tireless advocate for the issue she cares so much about—the unquestionable need for affordable and efficient transportation as an environmental, social, and economic necessity.

Before coming to Capitol Hill, Polly worked for the Port Authority of New York and New Jersey in the aviation department. There she helped to operate and manage three of the Nation's largest and most complex airports.

She then joined Senator Daniel Patrick Moynihan's office where she championed his philosophy—a cause I fight to advance to this today—that grand transportation and infrastructure projects are key to the economic future of New York, and to the entire country.

Then, right after I was first elected to the Senate in 1998, Senator Moynihan, my mentor and then senior colleague, told me he was giving me a gift—Polly Trottenberg, to be my Legislative Director.

I hired Polly immediately, and during her seven years as leader of my legislative staff, Polly Trottenberg never let me down.

Along with her expertise in a wide range of issues required to be an effective legislative director in the Senate, Polly always maintained her focus on advocating for and addressing the critical transportation needs for New York, and the country as a whole.

She lead the negotiations to bring low-cost air service to long neglected upstate cities, and also worked day and night to secure $20 billion in critical aid to help New York City recover and rebuild after the 9/11 attacks. Polly fought hard and always got the job done

Polly had a lot of big accomplishments, but it was her day in and day out commitment, drive, and intellect that truly set her apart.

On Capitol Hill, Polly is known in every hall as a preeminent voice on transportation policy.

After leaving my office, Polly went to work for my friend Senator Boxer. And, most recently, Polly was handpicked by Mayor Bloomberg, Governor Rendell, and Governor Schwarzenegger to be Executive Director of Building America's Future, their action committee which highlights the critical needs of America's transportation infrastructure.

There, Polly fought for the cause she loves—promoting the urgent need for Congress and the President to rebuild America.

She has continued that work both as Assistant Secretary for Transportation Policy and currently as Acting Under Secretary for Policy.

From our highways, roads and bridges, from the rails to the skies, America's transportation challenges are Polly's challenges. She embraces them and has a laser-like focus to meet them.

These are daunting challenges for any Administration or Department of Transportation to face, but President Obama has charted a new and ambitious course to not only tackle them, but also to expand and grow.

Polly's unquestionable dedication, experience, and intelligence make her uniquely qualified to craft and implement these bold initiatives

I recommend her nomination wholeheartedly and without reservation, and urge her swift confirmation.

I again thank Chairman Rockefeller and my colleagues for holding this hearing and look forward to working together to address this nation's critical transportation needs.

Senator SCHUMER. I just want to tell one brief story.

The week after I won election to the Senate, Senator Moynihan, the senior Senator, called me to his office. He said, "I want to tell you two things. First, you're the first to know I am not going to run again for the Senate; it'll open up the seat," which, later, Senator Hillary Clinton took over. But, second, he said, "I want to give you a gift." And I said, "What's that?" He said, in his Moynihan way, "Pol-ly Trot-ten-berg."

[Laughter.]

Senator SCHUMER. She had worked for Senator Moynihan for years. He suggested she become my legislative director. One of the best decisions I made was to have her be the legislative director. She was, for 8 years, and was just fabulous. So, she truly merits this position.

I thank the Committee for its indulgence and just ask unanimous consent my entire statement——

Senator BOXER. It will be put——

Senator SCHUMER.—be read into the record.

Senator BOXER.—right into the record at the very beginning——

Ms. TROTTENBERG. Thank you, Senator.

Senator BOXER.—as if given in its entirety.

Senator SCHUMER. Thank you. And——

Senator BOXER. And——

Senator SCHUMER.—I appreciate the courtesy of you and the members of the Committee.

Senator BOXER. Of course.

And we will get back with Senator Hutchison's questions. Let's go to 5 minutes.

Senator HUTCHISON. Thank you.

Let me start with Ms. Trottenberg. I'd like to have your assessment, today, of the Highway Trust Fund. One of the things that you said in your 2009 confirmation hearing is that it's probably the greatest challenge the Department faces. What is the status of it now? And do you have recommendations on how we can make it more solvent so it does not go into the general revenue?

Ms. TROTTENBERG. Well, as you all may know, thanks to MAP–21, we were able to get a—approximately $105 billion 2-year surface bill; and the trust fund pays for about 85 billion of that, and there's about 19 billion that was added in general fund provisions through various measures through the Finance Committee. When we get to the end of the 2-year period of MAP–21, the Highway Trust Fund will be close to depleted, and there is some anxiety that the transit account within the Highway Trust Fund may not even last the full 2 years. So, clearly, although we're very grateful for MAP–21—and it's a terrific boon for the transportation industry—

we still need to do some work on the long-term—shoring up the long-term funding of the Highway Trust Fund.

Senator HUTCHISON. I agree with you 100 percent, and I think Senator Boxer did a—just huge effort at passing that bill and getting us the funding for the infrastructure that we needed. Do you have suggestions on how you would address that dangerous shortfall?

Ms. TROTTENBERG. Yes. I mean, the administration, in its last budget proposal, recommended that we use some of the savings from the drawdown in Iraq and Afghanistan. And I think the President and other members of the administration, including Secretary LaHood, have frequently offered to try and sit down and work with Members of Congress. Obviously, finding a solution to the long-term needs of the transportation account is going to require the administration and the Congress, in a bipartisan way, making some revenue decisions.

We are also, though, using some of the authorities that Congress had granted us to at least make the dollars we have go a lot further, with programs like TIFIA, which can leverage private investment and, basically, bring back a return of 10-to–1 on Federal dollars. So, we are constantly looking for ways that we can use the programs. We have TIGER, as well, where we leveraged a lot of public and private investment.

But, clearly, there's going to need to be a bigger solution on the transportation front. The administration has put a couple of ideas on the table, but—going to need to work with Congress, I think, to find the ultimate solution.

Senator HUTCHISON. Well, let me just put on the table that Senator Kerry and I have an infrastructure bank bill that really is a lot like TIFIA. It tracks TIFIA. But, I think that might be another way to attract private money that could be leveraged, as well, so I hope that will be another option.

Ms. TROTTENBERG. Yes. And the administration has been supportive of your bill, and certainly of the concept of infrastructure banks and of leveraging private investment. So, that's an area where we certainly want to continue working with Congress.

Senator HUTCHISON. Just one other question to you, and then I'll move on, and that is, the length of NEPA environmental approval process has been another concern raised, that you go on and on and on. Are you looking at, not in any way lessening the look at the environmental issues, but shortening the process?

Ms. TROTTENBERG. Yes, that's a great question. And obviously, our administration is committed to having the best environmental outcomes for transportation projects, but we have two new sets of tools. One, MAP–21 had a lot of project-streamlining provisions, and we have been aggressively getting the rulemakings underway. I think a lot of them will be areas that I know will be music to the ears of project sponsors, and many here in Congress; having more categorical exclusions so projects can go ahead without having to go through NEPA; looking at a lot of ways that we can exempt projects, basically, from the whole process, and really speed them along.

We have also, administratively, prior to MAP–21—the President has put out an executive order and a Presidential memorandum

tasking all the permitting agencies to work together to try and speed up the approvals of transportation projects. And we have, now, a rapid response team with the DOT, the Council of Environmental Quality, EPA, and other agencies, and we try and work through projects as quickly as we can, and we have actually posted some of them on a dashboard that you can access on the White House Website, and we've really been able to really speed up some major projects around the country.

Senator HUTCHISON. I think that's good and should be continued.

Ms. Clyburn, I wanted to ask you about the open docket, the Title II reclassification docket that has remained open, despite Net Neutrality having already been issued. And if the open Internet order is struck down in the courts, would you support using reclassification, under Title II, to impose common-carrier regulations on the Internet?

Ms. CLYBURN. Thank you so much, Senator. And I want to join your colleagues in congratulating you, and how appreciative we are of your service. You're truly a role model.

As you have put forth, that determination has yet to be made. I will—when that—when we get that clarity from the court, I commit to you that I will have an open policy and engagement for all considerations as it relates to that.

But, I—I'm not comfortable committing on a pathway forward, at this time, as it relates to any decision I would make, without all of the variables in front of me.

Senator HUTCHISON. Well, I think there is concern, as you know, in some parts of the Senate, about what is considered overreach, by some, on the Net Neutrality ruling. I know that is not the view of all of the Senate. But, my question is, What limits, really, are you going to put on FCC actions, when the law is perhaps —well, it certainly wasn't enacted with the thought of Net Neutrality, and it seemed like an overreach, to many on our side of the aisle. Is there any view, on the Commission, that there be a more clear law before you go into the regulation and the Net Neutrality implementation?

Ms. CLYBURN. Any enhanced guidance from this body is welcome. We live in an ever-changing communications landscape, and that requires a whole host of engagements and on-the-go decision-making, as it relates to our engagement.

So, again, any clarity that you would be willing to give from that perspective is welcome, but we are, and will, continue to weigh all variables in front of us, and will follow the law to the letter.

Senator HUTCHISON. Well, thank you.

My time is up, and I'll let other members ask. I know we'll have a second round——

Senator BOXER. Yes.

Senator HUTCHISON.—and I do have another set of questions. Thank you.

Senator BOXER. We will have a second round, in order of arrival. So, we'll go Klobuchar, Lautenberg, Cantwell, Boozman, Thune, and Warner.

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

Senator KLOBUCHAR. Thank you very much.

Thank you, to all of you. You're all doing well today. Appreciate——

Senator BOXER. Oh, I didn't see——

Senator KLOBUCHAR.—hearing all these different issues.

I wanted to, first, start with you, Ms. Clyburn. And, appreciate all the good work you've been doing, as well, at the FCC. This is something I've talked with you briefly about before, and I know, just this week, you got a letter on this issue, signed by 35 Senators. It came to my mind again, just a few months ago, when I was up in a small town in Minnesota during a forest fire. It's a town of 900 people, the moose capital of our state. There's a moose on the water tower. And you can imagine how hard the small businesses have to work to keep in business there. And in the middle of finding out that they'd saved the town from the fire, two businesses were focused on one thing, and that is that customers are not able to reach their businesses because of the way this is working, with the least-cost routing services, that calls are literally being dropped. And they have—they've all created their own little graphs to show me the problem. And I know the FCC has been looking into this, but it is a major problem in rural areas. And, well, I guess I had a few questions about this.

First of all, if the FCC has sought to sanction any companies for these deceptive practices, if there is some work being—going on with the complaint process, because there have been some issues with that; they found it hard to file complaints—I know you've been looking into this—and that some of them are told to go to State agencies, yet I think we all know, most of this is going on with interstate carriers. And I am really pleading with the entire Commission to look at this issue again; it has not been resolved.

Ms. CLYBURN. I thank you so much, Senator, for reinforcing an issue that is important to me. While it is true, I don't think, in South Carolina, we have too many moose on water towers——

[Laughter.]

Senator KLOBUCHAR. Oh, come on.

Ms. CLYBURN. We—no. But, I assure you that the concerns that you express, as it relates to what we call "rural call completion" are as important to me as they are to you. I will assure you that the FCC is currently conducting investigations. Our enforcement bureau is doing that. And you will—as that nears completion, you will hear more about that.

For the first time, the FCC issued a declaratory ruling that was firm in the directive of those companies and what the responsibilities are, as it relates to call completion. Also, we have set up an online interactive site for those consumers, as well as an—a realtime engagement for those companies, that if they see and know that there is a problem—if there is a problem that exists—that they are to conduct us in realtime, and so that we can follow and follow up on those complaints.

So, I encourage all of you that have been—you know, you have been hearing about these particular issues—to have those companies, those rural carriers, contact us so that we can follow in

realtime and act appropriately. But, we are engaged, and soon you will hear more about that engagement.

Senator KLOBUCHAR. Because I'm just picturing if a major company in a metro area wasn't able to have people call them, I think we'd be hearing about it and doing something about it——

Ms. CLYBURN. Absolutely. It——

Senator KLOBUCHAR.—and that's what's going on.

Ms. CLYBURN.—impacts business and it impacts, potentially, emergency services. So——

Senator KLOBUCHAR. Exactly.

Ms. CLYBURN.—thank you.

Senator KLOBUCHAR. Thank you very much.

Ms. Trottenberg, I appreciate all the great words my colleague said about you, and I had a question. Senator Warner and I introduced the Dig Once bill, which requires that states install broadband conduits as part of any transportation project that is federally funded. And this proposal was accepted by the administration by executive order this summer. And, as Under Secretary of Transportation for Public Policy, I would like a commitment that you'll make sure that this gets implemented, because I really believe that one of—it's one of these things that makes so much sense, because, otherwise, people who have—states that have short road construction seasons, because of snow and bad weather, we're constantly having digging going on. And you imagine the public would really prefer that we would just dig once and do the conduits at the same time we did the Federal projects.

Ms. TROTTENBERG. Absolutely. And just—you probably know this, Senator. Our Deputy Secretary, John Porcari, was formerly the Maryland State DOT Secretary and was a real pioneer in making Dig Once work in that state, so he has been very committed to making sure we do a good job at DOT with that.

Senator KLOBUCHAR. OK, thank you.

And then, my last question—and you may be working with Army Corps of Engineers on this, but I just wanted to make you aware of the transportation issues that we're having on the Mississippi River because of the drought, where Minnesota, itself—we haven't had as much drought as some other states—but, our farmers and our businesses are starting to have trouble getting their goods down—on barges—to go down the river into Illinois and Missouri. And I just truly believe the future for our country is exports, and we're going to have to be able to have a transportation system, as I know you know, that works. But, I wanted to call your attention to this, as we're getting to some—a very dire situation on the Mississippi.

Ms. TROTTENBERG. Well, thank you. And there is already a lot of attention within DOT, the Army Corps, and at the White House. We're well aware of what's going on, and looking at the economic impacts, and talking about what we're able to do.

Senator KLOBUCHAR. OK, thank you. And then, I have some questions, Dr. Doms, about the Census, but I'll put those on the record.

Thank you.

Senator BOXER. Thank you, Senator.

Senator Lautenberg.

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

Senator LAUTENBERG. Thanks, Madam Chairman.

And thank each one of you for your willingness to undertake these very difficult assignments.

And I also would say a word about our colleague from Texas. It would be hard to say that we agreed on a lot of policy things, but the one thing we can agree on is that Senator Hutchison stated her case, knew the subject, and worked very hard to make her side the right side.

And we congratulate you for lots of good work, wish you well in the future.

And, Ms. Trottenberg, you're so accomplished, here, as we hear it from those who had contact with you before, that I am—it's easy to imagine that you're going to solve all these problems in a hurry. And we're pleased at that.

One of them—Sandy wreaked havoc on the East Coast, causing damage never conceived of before, especially to New Jersey's transit system, one of the more costly parts of the damage resulting from infrastructural damage to the transportation system. The recently passed surface transportation law included a new emergency repair program for transit that will help rebuild and perhaps even redesign systems after disasters like this strike.

The question that hangs over us in New Jersey is, Do we want to go back and repair the things as they were, or does it call for us to take a second look and see what's going to be most efficient, in terms of having the functioning appropriate and our—the availability of that part of our State to those who come in and are so much a part of our—the commerce of our State?

What do you think you have to do, if confirmed—it is noted, here, if confirmed; if you're not confirmed, you'll not do anything about it—but, if confirmed, what do you do to prioritize funding with a program like this?

Ms. TROTTENBERG. Yes. Thank you, Senator Lautenberg. And obviously, DOT has been working very, very closely with New York and New Jersey and all the affected areas, and particularly the Federal Transit Administration, I know, has been doing a lot of work with New Jersey Transit to get service up and running, and replace the cars that were damaged by the hurricane.

The emergency relief program that was created in MAP–21, unfortunately, as you know, it has not yet been funded, because it has been caught up in the Continuing Resolution. Some of our MAP–21 programs, although authorized, were not yet funded in that bill.

One of the advantages of that—of funding that program, versus going through FEMA, for example, is the—the FEMA requirement is, basically, that you build to the existing standard. The Transit Emergency Relief Program would enable us, I think, to, sort of, build to 21st-century standards, to take into account resiliency, which we're clearly going to need to do, and I think we're hoping, as we move forward, that we can activate that program. It will be, clearly, helping New Jersey and New York rebuild and make their transit systems more resilient—would be a top priority.

Senator LAUTENBERG. It's inevitable, or crucial to our recovery, that that part of the problem be solved. And it—Amtrak is plan-

ning to build a new tunnel, as you know, under the Hudson River, to increase high-speed rail and commuter rail service. That project will add much-needed capacity for our packed rail lines, while also ensuring that our infrastructure is prepared to handle the future storms.

What do you do to move projects like this forward without delay and without waiting for the ultimate design to be finished?

Ms. TROTTENBERG. That's a good question. And, as you know, Senator Lautenberg, Secretary LaHood has termed the Gateway Project critical. At DOT, we firmly believe it's critical for the future mobility needs, not only of the New York metropolitan region, but also for the whole Northeast Corridor. The capacity constraints with the two Hudson River tunnels are—it's a real issue. And, obviously, Hurricane Sandy has demonstrated, we need more resiliency in that travel corridor, as well.

We have started talking with offices here on the Hill, with New Jersey Transit, with the MTA, the Port Authority, New York State DOT, New Jersey DOT, and we're starting to explore. We recognize that certain pieces of the Gateway Project, we need to get started on right away. And we're starting to explore how we move forward with that. Obviously, there are some budget uncertainties at the moment. We don't yet know our fiscal 2013 budget situation. But, we're trying to look for every possible way we can help you proceed.

Senator LAUTENBERG. Madam Chairman, if I can just throw in one more——

Senator BOXER. Yes, go ahead.

Senator LAUTENBERG.—question, here.

And—directed for Dr. Wright—and as I looked at material that you've written and that we know about, and your concern is for—against "excessive regulation." But, how do you do—how do you protect the safety of the consumers without having rules? Is one a challenge to the other, and, say, less is more, when it comes to—because yours is a regulatory responsibility, if you have it, and——just kind of clear the air for me a little bit.

Dr. WRIGHT. I'm happy for the opportunity to do so.

I do believe in rules and regulation. I also believe that markets are a powerful institution that operate for consumers. I believe, and have written, that regulation has the power and ability to harness markets to work for consumers. There are also risks that regulation can operate to the detriment of consumers.

In my academic writing, I have taken positions, for example, in the competition space in which I'm most familiar, calling for greater regulation and greater sanctions in cases involving price-fixing. What I believe, and I would say my focus is, is not on the amount of regulation, but, rather, I think, as most economists would approach the subject, is driven by thinking about consumer welfare and whether or not regulation, in any instance, operates to improve, increase, or reduce consumer welfare. I think that would be a fair way to characterize my approach.

Senator LAUTENBERG. Thanks very much, Madam Chairman. Thank you.

Senator BOXER. Thank you.

So, in this order: Cantwell, Ayotte, and Pryor. Unless anybody else comes back, that's what we'll do.

Senator?

Senator CANTWELL. Thank you.

Ms. Trottenberg, thank you so much for mentioning the freight mobility efforts of the Department of Transportation. I look forward to working with you on that implementation, and very big priority for helping to create more jobs as it relates to exports and to making sure the product is competitive, moving out of our borders.

And, Ms. Clyburn, I know my colleague Senator Boxer mentioned this letter on media consolidation. I sent my own personal letter, but I'm certainly supporting Senator Sanders' letter, as well, and feel very strongly that the Commission may be heading toward a resolution of disapproval by Congress if it continues down this route. I mean, this is not the Rupert Murdoch view of, you know, the world. We are saying that, if you want to have an independent media, they need to be independent, not consolidated. And so, we will be loud and boisterous about what the Commission is intending to do if it follow—if it continues to follow this path.

Ms. TROTTENBERG. I appreciate your engagement.

Senator CANTWELL. Thank you.

Mr. Wright, I wanted to ask you—I know my colleagues have asked you a little bit about your recusal comments; and you and I had a chance to talk in my office a little about this—but, you know, the FTC can sometimes move at a glacial pace. So, while you're saying you would recuse yourself from things that are, you know, a conflict before the FTC, are you talking about all current enforcement matters before the FTC? What I'm saying is, that 2 year period of time, there could be something that's before the FTC right now, and, 2 years from now, it could still be before the FTC. So, even though you've said, "Well, I'll recuse myself on—for a 2 year period," these are things that are currently before them. So——

Dr. WRIGHT. Yes, I appreciate the opportunity to clarify and expand on our earlier discussion about recusal obligations.

The 2 year period comes from the President's ethics pledge. If a case triggering any potential conflict of interest, as it relates to Google or any other potential case that would trigger a conflict based on disclosures I've made to the Committee and also to the Commission, I would then go to the ethics officials at the FTC, who are experts in exactly what the recusal and other conflict-of-interest obligations are beyond that period. I'm not an expert in those obligations. I can assure you, when and if there is any obligation, under the letter or the spirit of the recusal—excuse me, of conflict-of-interest standards, I will recuse myself.

Senator CANTWELL. Well, I think I'll probably ask you a more direct question for—in writing, because you've obviously been involved, on behalf of some interests, and if you are—and that time period could take longer than 2 years to resolve those individual issues. And so, I'd—I am not going to—I'm not going to leave it up to a trust of the—you're going to check in, 2 years from now, with the FTC. I want to know if you were involved in a case now involving a matter before the—currently before the FTC, and it's not resolved within 2 years, whether you're going to recuse yourself, yes or no; not, you're going to consult with somebody. I want to know—

so—but, we'll get you that in writing, so you'll have a firm viewpoint of that, and then you can give us a response.

Dr. WRIGHT. I appreciate that.

Senator CANTWELL. And then, I think Senator Boxer asked this question, but—so, if somebody has paid you, financially, for the type of work that you've done, will you recuse yourself from matters in—revolving around those writings?

Dr. WRIGHT. Yes. I have dozens, over 70, academic publications—books, a case book—and a handful of those writings, I've received funding either—directly or indirectly—either for support for research or through a think tank. All of those have been disclosed, both to the Committee and to the Commission. In those cases—for example, in Google, I will recuse myself, at a minimum, for the period of the 2 years, under the President's ethics pledge.

Senator CANTWELL. But, that's why I'm still—I'll come back to you on that, because I—if you've written about it and consulted on it, it doesn't matter—if it's a case that's now before the Commission, and it takes 3 years to resolve, I want to know whether you're going to recuse yourself.

So, OK, I need to move on, because I don't have a lot of time. I'm trying to help the Chair, here, run here hearing.

Can you state your views on the FTC's rulemaking, Section 811, pursuant to the energy bill of 2007, that prohibits market manipulation, and whether you believe the FTC's rules are accurate and appropriate in the interpretation of that underlying statute? You and I had a chance to talk about this; I'm not trying to get whether you know the specific section of the code, as much as this issue which you and I have discussed.

We have given the FTC the ability to police oil markets for antimanipulation behavior. The Federal Energy Regulatory Commission has had this authority, as it relates to oil in—I'm sorry, as it relates to electricity, natural gas markets—and it used that authority, I believe, appropriately. The FTC has more recently had this authority. It took, I think, until 2009 to get the rulemaking. I want to understand whether you are solidly behind the use of those—that statute, and how you see it being implemented.

Dr. WRIGHT. Absolutely. Since our last discussion—and one of the things I said is, I've traditionally been an antitrust guy, and, as a non-antitrust rule, sort of, outside of my initial expertise, so I did go back, I've looked at the rule, I've read some of the comments around the rule and had some time to learn more about it, in anticipation of having this conversation today.

I also understand the disparity in the activity level between, as you mentioned, FERC versus the FTC's investigations under the rule. I understand the rule was designed to be implemented, or designed in around a (10)(b)(5)-like fraud standard.

I believe that protecting consumers in oil and gas markets is very important. This is one of the markets that affects everybody, and affects everybody in an important way. I can commit to you that, where there are violations of the rule, I will support enforcing the law. I do not know, because I'm not privy to—I do understand there's an investigation underway, but I'm not privy to any of the details of that investigation, or why, for example, there's the disparity in activity level between, for example, FERC and the FTC.

I can also commit to you that, if confirmed, I would talk to the staff to try to find out what's going on with respect to enforcement with the rule, why the numbers are different. I could commit to talking to folks at FERC or the SEC who are, themselves, implementing this rule in a more active manner, and try to get a sense at what the obstacles are——

Senator CANTWELL. I think my time is expired, so we'll probably follow that up, as well, in writing, and if you——

Dr. WRIGHT. Absolutely.

Senator CANTWELL.—could respond to that.

But, this is—will be a very critical and important element of my deciding about your nomination. I don't think the FTC is being aggressive enough, and I'm sure as not going to support anybody to be on the FTC that isn't going to help in implementing this new law in an area where consumers deserve protection.

Thank you, Madam Chairman.

Senator BOXER. Senator, we are going to have a second round, if you want to stay. We're going to have another round.

Senator Ayotte.

STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE

Senator AYOTTE. I thank the Madam Chair.

I want to thank all the witnesses for being here.

And I know that Senator Hutchison has left, but—oh, there she is.

Senator Hutchison, I just want to thank you for your tremendous leadership and how hard you've worked, and how dedicated you've been to this committee. I will miss your leadership in the Senate, and I consider you someone who we can all aspire to serve and be like. So, thank you.

I wanted to ask Commissioner Clyburn a quick question about—New Hampshire is one of the states that's a net donor to the Universal Service Fund. If you look at the statistics from 2010, the last available year on your website, New Hampshire gave about $25 million more to the fund than it received. And when you look at the current Universal Service Fund tax that you'd receive as a consumer, it's about 15 percent, roughly, of the bill that the consumer receives for telecommunications services. And during difficult economic times, this tax is not insignificant.

What steps has the Commission taken to address the Universal Service Fund burden on consumers, number one?

And then I have a follow-up question. What should I tell my constituents? There are areas of New Hampshire, including in the North Country and other more rural areas of my State, that still don't have full broadband access; and yet, when they look at their bills, and they see themselves paying this fee, they're wondering, "Well, why is my money going to Oklahoma or Wyoming or some other State, when we have real needs that very much impact economic development in those areas of New Hampshire?"

Ms. CLYBURN. Thank you very much, Senator.

If I were in your shoes, I would affirm to my constituents that the FCC has moved forward on an aggressive incentive-based, fiscally proficient regulatory framework to reform the Universal Serv-

ice Fund in order to, going forward, ensure that the funds received by carriers will go to, not only voice-enabled services, but broadband-enabled services. We have reformed the Universal Service, to the point where both price cap—in price-cap areas, as well as raised-return areas, that they are—have their marching orders, in essence, that, again, if they receive this fund, they have certain obligations by certain timetables.

We have also put this fund on a budget. We have freezed the level of support. We have made some reforms, both internally as well as a subset in our lifeline proceeding, that has—is on track, this year, to save $200 million to that fund.

So, you can tell your constituents that what we have done was to—is to reform a framework that has served well over time, but was inefficient and ill-equipped to meet the communications needs of the day. So, targeted, streamlined, fiscally responsible approach, where everyone is accountable and everyone is on a budget. So, you will see—the figure you quoted? I am confident that will—it will continue to decrease, over time, because we put budgetary constraints in place.

Senator AYOTTE. I appreciate that, and I just want to make clear that I would like to see that. And the deficiency? Obviously, for consumers in New Hampshire, when we have real broadband needs I appreciate that we're moving in the direction of reform. I would love to see you do anything possible to expedite that, and particularly for those states that are donor States, but yet have real needs that could be addressed by the Universal Service Fund.

Ms. CLYBURN. There are 19 million Americans that are similarly affected, and the reforms in place, and the—what we have done, we're well on our way to address those needs, to the tune of 400,000 people, in short order, through a reverse auction that we just conducted—additional persons—and 83,000 more rural mouths will be serviced, from a mobility side. So, we're taking a one-two approach, both from a terrestrial standpoint, as well as a mobile standpoint, to ensure that that experience is a more robust and equitable one for your constituents.

Senator AYOTTE. Good, I appreciate that, and I look forward to continuing to work with you on this important issue to my New Hampshire constituents.

Ms. CLYBURN. Thank you, Senator.

Senator AYOTTE. I see my time's up.

Senator BOXER. Thank you, Senator Ayotte.

So, we're going to have a second round. And I'll start off.

First of all, Dr. Doms, you're the most fortunate person on the panel.

[Laughter.]

Senator BOXER. Just consider yourself very fortunate.

[Laughter.]

Senator BOXER. And I have no questions for you, which really is going to make you happy.

Dr. DOMS. Thank you.

Senator BOXER. So, we will get back to Dr. Wright.

[Laughter.]

Senator HUTCHISON. He'll be happier, still, when I don't have any questions.

Senator BOXER. Oh, I'll be happier, still.

[Laughter.]

Senator BOXER. Dr. Wright, this is an easier one for you. This past October, California retail gas prices spiked to a record of $4.67 per gallon, and the refineries had a very easy explanation. They said, "Well, we've had disruptions, we've had fires, and the like," and everyone kind of believed it, until a private sector firm stepped up to the plate—McCullough Research—and they said—McCullough Research—and they said, "No, we just looked at the emissions data, and there was no flagging in refinery production, and there's no way that this could have been the case." So, we called on the Federal Trade Commission—Senator Feinstein and I and others—to investigate the causes of the spike.

Now, you know, the job you aspire to, it means a lot to our state, because we went through the Enron scandal and the rest, and we're still—we still know people who just went out of businesses, small business, because the manipulation of electricity rates and people saying, "Sock it to grandma," and all that stuff. So, we're in sort of post-traumatic stress from that; we haven't gotten over that. And now we're asking the FTC to aggressively look at this.

So, what do you think the FTC should do if it turns out the private sector research firm is right and this so-called shortage never really was there, and this has all been manipulated?

Dr. WRIGHT. Senator, I appreciate the question.

Let me say, first, I was born and raised in California——

Senator BOXER. I know. San Diego.

Dr. WRIGHT [continuing]. My parents, who are here, are from California——

Senator BOXER. Yes.

Dr. WRIGHT.—came out from California. I spent a long time paying California gas prices. And, as an economist, I also care a great deal about issues impacting consumer welfare that have a large impact——

Senator BOXER. So, what would you do about this specific thing if it turns out that there was manipulation of the data?

Dr. WRIGHT. The Commission has a number of tools available to it, both under its Unfair and Deceptive Practices authority, should that be triggered; obviously, if there's collusion through traditional competition——

Senator BOXER. Would you look at disgorgement? That made you cough, I know; I'm sorry.

[Laughter.]

Dr. WRIGHT. Yes, it did. It did.

We also have available to us——

Senator BOXER. Would you look at disgorgement?

Dr. WRIGHT. Absolutely, I would look at any and all appropriate remedies as an issue that I would be——

Senator BOXER. OK.

Dr. WRIGHT.—happy to talk with the staff about, with the Commission——

Senator BOXER. Well, it's not "be happy to talk to." We have asked for a serious investigation. Our people are paying $4.67 a gallon because they were told there was a shortage, and we all accepted it. And now it turns out, if this firm is right and we have

the emissions to prove it, there was no such shortage. And I could tell you, Senator Feinstein and I are just up on the ceiling about this. So, it's not a question of "talking to the staff," it's a question of being part of an—a very aggressive investigation.

Let me move on to two questions that the Chairman has for you. Chairman Rockefeller.

The FTC supports an online consumer tool called Do Not Track mechanism. What that means is that if consumers are visiting Websites to learn about sensitive matters, like a medical condition or a personal financial matter, they should have a choice to do it without having online companies tracking them.

Do you agree that consumers should have the ability to tell companies not to track them, and that companies should honor that request? Yes or no.

Dr. WRIGHT. Yes.

Senator BOXER. Good.

What is your opinion of the FTC's privacy report and its Do Not Track recommendation?

Dr. WRIGHT. Consistent with the last answer, I support the Commission's view in favor of a Do No Track mechanism. I support—the reports focus on notice and choice, and consumer choice of key aspects of developing its approach in privacy.

With respect to specific recommendations regarding Do Not Track legislation or other similarly——

Senator BOXER. Well, could you just give us a written answer to that, to the exact recommendations of the Commission? Would you do that for us?

Dr. WRIGHT. Absolutely.

Senator BOXER. Thank you.

And the last question. This is from Chairman Rockefeller. Our country is still recovering from a major financial crisis that began in 2007. Homeowners across the country saw their homes drop in value, and faced foreclosure and displacement. Since that time, numerous states and Federal agencies have brought cases against banks and mortgage companies—successful cases—for deceptive practices that led to and worsened the crisis.

While most people say that the mortgage industry is to blame for many of the problems that arose, Dr. Wright, you take a very different position. This is Senator Rockefeller writing this. In a law review article you published, you said that foreclosures, quote, "did not present a consumer protection issue." Here's what you wrote, "While there was undoubtedly fraud during the housing boom, both by borrowers and lenders, the problems that have been seen in the mortgage market are the result of national"—oh, sorry—"rational consumer responses to incentives, not a problem of fraud, consumer confusion, or systematic irrationality."

So, I just have to say, just my own opinion, is, "Oh, boy, just don't say that around San Diego, because people don't agree with that."

And, given your views, if you're faced with a crisis of this magnitude—this is a question coming from Senator Rockefeller—how can we trust you to be a commissioner and address the concerns of American consumers, if you basically say, you know, it's their fault?

Dr. WRIGHT. I appreciate the question, and from Senator Rockefeller, as well.

In the same article, I did say that regulators could have, and should have, done a better job in that market at the time.

And let me say further, with respect to the Commission's core mission of fighting fraud and deception, I am extremely supportive. I have been in other academic writings. And, in general, my view is that conduct that harms consumers should be prosecuted to the fullest extent of the law available to the Commission. With respect to fraud, I take the same position, and I can assure you that, if confirmed, I will do so.

Senator BOXER. OK. Well, I would appreciate seeing those papers, because this one is a little scary, when you say foreclosures did, quote, "not present a consumer protection issue," since we know, from court cases all across the country, that there were many people who were putting these mortgages that were deceptive, people didn't know what they were getting into, and the rest; and there was clear deception, and many of the banks have stepped up and paid billions of dollars, essentially saying, you know, "We pushed through these documents; people didn't realize what was happening."

So, I just would love to see your other writings, where we can say to Chairman Rockefeller that, "Dr. Wright has other papers where he takes an aggressive view in favor of consumers." So, you'll submit those——

Dr. WRIGHT. I'd be happy to do that.

Senator BOXER [continuing]. For the record?

Senator BOXER. Thank you.

Senator Hutchison.

Senator HUTCHISON. Well, I have listened to the questions from the Senator from California, and I would just ask, if there were an investigation by the FTC, would you consider that, even though the number of permits being issued on private lands—and oil wells being drilled because of new technology have increased, nevertheless, the number of permits being issued in the Gulf of Mexico, which is the second largest potential oil recovery in our country, second to Alaska, have virtually stopped. The Gulf of Mexico is under a permitorium because the number of permits being issued by the government in the Gulf of Mexico have severely been lowered. So, if you were going to do an investigation of what is causing the price of gasoline to go up, would that also be a fair area to look at, if you are determining if there is collusion or antitrust violations or fraud, also the actual data on number of wells being drilled?

Dr. WRIGHT. Absolutely, Senator. To identify the conventional sort of analysis, the Bureau of Economics and the folks at the Commission engage in would look at all relevant data on supply and-demand factors. This is something that they've done in many contexts, and I would, of course, if confirmed, support a thorough investigation of all of those factors before coming to any conclusion.

Senator HUTCHISON. Well, thank you. I think that it is important that the FTC follows the law, that if there is an unfair business practice or unfair method of competition, that there be a vigorous investigation. But, I would just also say that it's very important

that the Commission stay within the law that it is formed to implement, not make. So, I will not ask you a question on that, because I think that it's self-evident.

But, you know, I think we could do a whole lot more to bring down the cost of gasoline with the XL pipeline out of Canada coming to the refineries, which we'd love to have 24 hour-workloads in my home state; and the Keystone pipeline is one way to do it. So, I don't think it's a matter of—well, I don't know, maybe an investigation would show something different, but we've got to drill more wells if we're going to have more gasoline; and so, I would hope that there would be a fair hearing, if one is launched.

I would just like to say, Dr. Doms, the area that I think you have certainly had experience with is the Census, and I think there has been a discussion of how the last Census was done. Can you tell us if you believe that the method used in 2010 was valid, and was it as efficient as it could be, or do you have other thoughts about it?

Dr. DOMS. OK, I appreciate the question, Senator.

In terms of the effectiveness of the Census in 2010, all the research shows that it was the most accurate Census that we've ever done. So, that's the good news.

In terms of efficiency, what I'd like to do is talk about what we're doing to plan ahead for 2020, because we realize that the costs incurred in 2010 have to be tempered, especially in this fiscal environment.

We've been very aggressive in planting—in planning for the 2020 Census. We are working closely with the GAO. We have taken onboard the recommendations from the National Research Council. And we are having quarterly meetings with congressional staff to talk about our progress to reduce the cost of 2020, going forward; in terms of using new technologies and looking at where the major costs were in 2010, and asking the question, How can we reduce those costs in the future?

Senator HUTCHISON. Thank you. That's very good. I agree with you, I think it was universally considered a good Census, and anything that can be done more efficiently would be, of course, welcome.

Last question to you. You've been the Chief Economist at the Department of Commerce, and obviously the biggest issue we face today is our unemployment rate and getting our economy up and going. Do you have any thoughts, from an economist's point of view, about what we could be doing that would spur growth in the economy? And what would you be recommending to the Secretary, going forward?

Dr. DOMS. That's an excellent question. One of my roles that I play that I take very seriously is that I talk to business leaders a lot. That is something that I did in my previous career with the Federal Reserve, and that's something that I do now. I've spoken to business leaders from many of the states that are represented on the dais today. What I do then is, I take that information, and I transmit that information to folks in the administration.

When we look at the economy today, in job creation over the past 34 months, we've had about 5.4 million new jobs. Those are in the private sector. The government sector has actually been con-

tracting. And it's going to be the private sector, going forward, that's going to create the jobs.

So, anything that I hear from the private sector, I then transmit to—to better form our policies.

Senator HUTCHISON. All right. Thank you very much.

And, Madam Chairman, I'm——

Senator BOXER. Thank you, Senator.

Senator Ayotte.

Senator AYOTTE. Thank you, Madam Chair.

Dr. Wright, I wanted to ask your view on Section 5 Authority. Some members of the Commission have said the FTC possesses powers under Section 5 that extend beyond our antitrust statutes. However, when you ask them what their interpretation is of these powers, they are not clearly defined, in terms of the boundaries of what would go beyond the antitrust statutes. What I'd like to understand is this: if we're going to ask people to comply, we need people to understand clearly what the rules are. If there are these undefined powers under Section 5, then I think it's difficult for businesses to understand, How do we then know what behavior we can and cannot engage in?

So, how would you approach this? How should the FTC approach the definition of Section 5 authority in a way that can provide certainty to market participants?

Dr. WRIGHT. I very much appreciate the question. And I certainly share the concern that having a legal standard that's amorphous or vague can impose costs on both businesses and, in turn, upon consumers.

I'm afraid my answer is not going to settle the scope of Section 5 for you, unfortunately.

Senator AYOTTE. Well, I just noticed the Chairman in the audience; maybe he can——

[Laughter.]

Dr. WRIGHT. The—we may have different answers.

[Laughter.]

Dr. WRIGHT. I don't think—let me start with, I think, a proposition on which most people in the competition community agree upon with respect to Section 5, which is that I don't think that there's much debate that it does, in fact, extend beyond the scope of the Sherman Act. For example, there is not much debate over the use of Section 5 in engaging in enforcement actions for invitations to collude, which fall short of the Sherman Act 1 prescription, because there's no actual agreement, but don't offer any benefits to consumers, have a real risk of harming them, were the agreement to come to fruition. And so, an agreed upon area, in an area of application for Section 5, Unfair Methods of Competition, at the FTC, which I support, is in the use of invitations to collude. Beyond invitations to collude is where there's a great deal of uncertainty about when and where, both what guiding and what limiting principles, will apply to application of Section 5. There are a number of different views on that topic. I know that the Commission has had a workshop on the subject. They're, sort of, developing a record.

If confirmed, one area that I think the Commission—one thing the Commission could do, on behalf of both businesses seeking clarity in the area, but, most importantly, consumers who would ben-

efit from that clarity, is to issue a policy statement that would articulate those guiding and limiting principles. If confirmed, I would look forward to working with the Commission and the staff on what those Section 5 Unfair Methods of Competition investigations are looking like, incorporating their views; of course, working with the Committee, as well. But, I do think a policy statement along those lines would be to the benefit of the consumers, in the interest of the agency's mission.

Senator AYOTTE. And this type of policy statement would, in your view, if it were agreed upon by the Commission, provide clarity and be issued for the public consumption?

Dr. WRIGHT. The one I have in mind would, yes.

Senator AYOTTE. OK.

[Laughter.]

Senator AYOTTE. Also, with regard to Section 5, there have been instances where, in certain enforcement actions, the terms become the de facto regulation for the entire industry, because of the nature of the enforcement action. Sometimes the Commission has engaged in voluntary guidelines. One example would be the interagency Working Group on Food Marketing. So, in these cases, what ends up happening, I think, is, by what is issued, the guidelines that are voluntary end up becoming de facto regulations that the industry feels that they must comply with. So, what do you think, in terms of the issue of Section 5 with regard to applying it to a voluntary guideline situation?

Dr. WRIGHT. That issue, and the specific example, are a bit outside of the, sort of, typical of Section 5 uses I'm familiar with, in the antitrust context. I am aware that the Commission will work with groups, like the Interagency Food Working Group, to contribute its expertise on the marketing side, or some other expertise it has, to a self-regulatory or other sort of regulatory process.

I, if confirmed, will have to learn more about the agency's role in those sorts of processes, and certainly would intend to do so.

Senator AYOTTE. Good, I would appreciate that. And also, I just think it's important for people to have clarity and for the responsibilities to be defined on who makes the regulations, versus the Commission action on certain areas.

So, thank you.

Senator BOXER. Thank you, Senator.

Thank you, Senators. And thank you, panel. You've all been patient and articulate.

And I just wanted to, so to speak, clear the air on our California gas issue, because Senator Hutchison and I—I don't necessarily disagree with her. She wants to see more drilling. I, you know, disagree with her point that that's an issue of debate. I believe, you know, clearly, that we have the right balance now. I believe, speaking for her, because she said it, she would like to see more drilling. We have more drilling; she'd like to see even more. I believe protecting the coast and the rest of it is an economic issue. But, that's not what the Commission's about.

What the Commission's about is, if there's manipulation and if statistics have been played with, the Commission has the absolute responsibility to look at it. So, I want to just put it on the record—

and then we'll stand adjourned, here—what happened, and why Senator Feinstein and I got involved in this.

When our gas prices spiked so high, headed toward 5 bucks—and they were going to $5; they were at $4.67—what we said—what we were told is that there were problems at the refineries. And we knew there was a fire at one of—and we believed—we thought, OK, that's a fair-enough reason. But, this private firm did something very interesting, and they measured the emissions coming out of those refineries, so they knew exactly how much product was being refined. And, at the end of the day, it turned out there was no shortage. This is our opinion, and we're very upset about it. So, what we want to make sure is that there wasn't some kind of a collusion situation to say there was a shortage of product, when there wasn't.

But, the issue of drilling off the coast, or on the coast, or more or less, is a very important debate that's going to go on long after both of us are not here in the Senate. But, for now, this issue has nothing to do with that. The Commission has nothing to do with whether we drill more or less, but that they have to protect the consumers, here. And they may find, as they have many times, that there was no manipulation. I'm very disappointed in the history of the Commission, to be honest with you. They've never so much as scolded the oil companies. So, I'm not happy with them. Even the current members, whatever party. OK?

But, I wanted to get your answer, and I was glad—happy with your answer, sir, because you said you felt it was something that you would look into; and if, in fact, you found that there was manipulation, you would take action.

I want to thank everybody. I want to say, in behalf of the Chairman, we wish you all well, and we thank you. And we thank your families for being here; we know that all these jobs require sacrifice from family and loved ones.

So, thank you very much, everybody. We stand adjourned.

[Whereupon, at 4:15 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO HON. POLLY E. TROTTENBERG

Surface Transportation Funding

Question 1. It's no secret that funding for our surface transportation system is a huge challenge. The Highway Trust Fund is broken and being held together by completely unrelated "pay-fors". Amtrak and the intercity passenger rail grants are subject to unpredictable annual appropriations. At this point, I really don't see much difference in the way we pay for highways, transit, or trains. Yet it's overwhelmingly clear that we are in dire need of more investment in transportation infrastructure across the board.

Ms. Trottenberg, the Administration has been hesitant to seriously propose any new funding mechanisms, beyond the occasional mention of using savings from military drawdowns in Iraq and Afghanistan. In addition to the traditional gas tax approach, what other realistic options are there to fund transportation? What creative solutions do you propose?

Answer. Clearly finding sustainable funding for the Federal surface transportation program is an urgent challenge confronting policymakers. The Federal gas tax has not been raised in 19 years, and with Americans driving less per capita and the Nation's vehicle fleet growing ever more fuel-efficient, the Highway Trust Fund's purchasing power continues to decline. Congress has added over $54 billion in General Fund transfers to the Highway Trust Fund over the last few years, including almost $19 billion for MAP–21.

The Obama Administration has proposed using the savings from the military drawdowns in Iraq and Afghanistan as a source of funding for transportation and has supported programs such as TIFIA, TIGER, RRIF and an infrastructure bank that would help leverage additional public and private funds for transportation. A number of other experts have proposed variations on the gas tax such as oil import fees or VMT fees. So far none of the proposals have drawn a critical mass of support among elected officials and transportation stakeholders.

As such, the Administration has committed to working with Congress to find a more sustainable funding solution. In recent history, Congress has increased revenues for transportation only in the context of more comprehensive bipartisan tax and deficit reduction legislation. Given the magnitude of what is required to put the Federal surface transportation program on a sustainable path, it will require negotiation at the highest levels to reach agreement on a future transportation revenue source.

Question 2. How can we create a more predictable, sustainable funding stream for Amtrak and passenger rail in general? Should states be able to use their Highway Trust Fund dollars for rail projects if they desire to do so?

Answer. We face a similarly daunting challenge in funding Amtrak and passenger rail. Currently both are funded through annual appropriations making it difficult to plan and execute long-term capital projects. In its FY13 Budget submission, the Administration proposed creating a separate funding account for passenger rail. Additionally, there should be some discussion about providing states with the flexibility to use their apportioned highway or transit funds for rail projects, based on local needs and priorities.

Surface Transportation Reauthorization (MAP–21)

Question 3. Ms. Trottenberg, as you know Congress passed a surface transportation reauthorization, MAP–21, earlier this year. This legislation contained reauthorizations of several agencies under the Commerce Committee's jurisdiction, including those related auto, bus, and truck safety. While this bill included a substantial number of new requirements and reorganization of our transportation programs, the authorization only lasts until September 2014. What are the key challenges to implementation of MAP–21 in the shortened time-frame of the authorization?

Answer. The Department commends Congress for its work in passing MAP–21 with substantial bipartisan support, and we are hard at work implementing its new provisions, including a focus on the new safety oversight and enforcement authorities granted to FMCSA, NHTSA, FTA and PHMSA.

We believe the provisions in MAP–21 requiring performance measures and performance-based planning will ultimately empower State DOTs, transit agencies, MPOs, elected officials, and the public to make more informed and cost-effective transportation investment decisions. But these provisions will be a real challenge to implement. They will require transportation agencies to collect more data and to do more analysis of those data to show how policy changes can lead to improved performance. And they will force transportation agencies to face real conflicts between traditional decision-making practices and practices focused on improving performance.

Finally, MAP–21 requires DOT to undertake dozens of safety, project delivery and performance-related rulemakings over a two-year time frame and it the Department, working with OMB, will have to work aggressively to meet the legislative deadlines.

Question 4. What are the key issues, beyond funding, that need to be addressed in the next reauthorization?

Answer. We hope to build on our work in performance management in the next reauthorization and offer states greater flexibility to meet their performance goals in the most cost-effective way. We expect that the implementation process will help inform policymakers for the next reauthorization, and we do believe that there are several areas that the next reauthorization should address. One priority is a rail title, which we recognize Congress may also choose to address next year when PRIIA expires. The Administration strongly supports creating a long-term legislative framework for high-performance passenger rail, including Amtrak, and freight rail in the U.S.

A second priority is developing a more multimodal approach to transportation policy. The TIGER Grant Program enacted as part of the Recovery Act was a breakthrough in allowing us to direct funding to whichever mode of transportation could most effectively address a transportation problem. MAP–21 makes some progress in that direction, but we still have extensive restrictions on how funding can be allocated. The Administration's Infrastructure Bank proposal was significant not only for its funding innovations, but also for allowing funding to be directed in a multimodal way.

Third, we need to make further progress on distracted driving. As you know, curtailing distracted driving has been and will continue to be a priority policy area for the Department. We are pleased that 39 States, the District of Columbia, and Guam have already banned text messaging for all drivers; and that 10 States, the District of Columbia, and the Virgin Islands have prohibited all drivers from using handheld cell phones while driving. Building on this momentum, the Department will look for opportunities to encourage states to pass additional comprehensive distracted driving laws, and will make this a priority in the next reauthorization.

Private Financing of Infrastructure

Question 5. Ms. Trottenberg, you testified before this Committee in July 2011 about how we can best leverage limited Federal funding to partner with private capital and increase overall infrastructure investment. This is an issue I, among others on this Committee, remain strongly interested in. While we have been able to move legislation yet, we have seen some success through programs such as the Federal Highway Administration's TIFIA program and Federal Railroad Administration's RRIF program. Beyond these existing programs, are there other initiatives the Department is working on to promote private investment into infrastructure?

Answer. We share your interest in leveraging Federal funding to encourage broader investment of private capital in transportation infrastructure. MAP–21 included several provisions aimed at this objective, which we are implementing. MAP–21's expanded TIFIA program is a powerful catalyst for increasing private investment. Since 2006, TIFIA has facilitated eight major public-private partnerships in the United States worth approximately $13.5 billion. The TIFIA loans in these projects represent less than one-third of the total value and were critical to the project sponsor's ability to attract private debt and equity for a substantial portion of the remaining costs. A number of the projects that have submitted letters of interest for the expanded TIFIA program under MAP–21 will be delivered as public-private partnerships, and will be facilitating substantial co-investment by the private sector.

We are also implementing the provisions in MAP–21 that require the USDOT to provide guidance on best practices for structuring public-private partnerships and to create model contracts for the most popular type of public-private partnerships.

Private sector involvement in these projects doesn't simply provide access to new sources of capital, but also include involvement in the design, construction, operations and maintenance of the projects, which may create opportunities for innovation, accelerated delivery, and other benefits. With the implementation of these new MAP–21 provisions, we will be helping many of our state and local partners better understand these potential benefits, while ensuring that the public interest is protected.

Through DOT's other competitive programs, particularly the TIGER program, we have been encouraging our state and local grantees to partner with the private sector to deliver their projects more efficiently and more effectively. Many of the freight projects that we funded in TIGER, for example, facilitate greater investment by private freight railroads in new rail capacity. These investments include major investments in CSX's National Gateway Project and Norfolk Southern's Crescent Corridor project, but also include public and private sector co-investment to mitigate some of the worst bottlenecks on our freight rail system, like the CREATE project in Chicago, the Colton Crossing Project in Southern California, and the Tower 55 Project in Fort Worth, Texas. Sometimes a small injection of discretionary Federal funding can provide the final piece of a funding package that includes private, state, and local funding.

Of course, more can be done by USDOT and Congress to facilitate broader private investment in our infrastructure. For example, while the Private Activity Bonds program administered by USDOT was under-utilized in its early years, it is increasingly used to finance major public-private partnerships, often in concert with TIFIA, and it looks increasingly likely that our $15 billion national volume cap will be fully allocated, assuming market conditions remain relatively favorable for the issuance of these bonds. Increasing the national volume cap would facilitate broader private sector investment.

Question 6. Have you considered how the Department might be able to move forward on some of the concepts behind an infrastructure bank or fund without legislation? Are there steps you can take right now?

Answer. USDOT's implementation of the expanded TIFIA program under MAP–21, and other competitive programs like TIGER, has demonstrated, and will hopefully continue to demonstrate, the value of many of the concepts behind the national infrastructure bank proposals.

- TIFIA and TIGER both leverage substantial public and private sector co-investment, with TIFIA historically funding no more than 33 percent of project costs (this could potentially climb higher under MAP–21) and TIGER historically attracting approximately $2 of non-Federal co-investment for every $1 of TIGER funds awarded to a project.
- Both programs have broad eligibility criteria, opening up Federal funding to a host of surface transportation projects that are not generally eligible for formula funds, including freight rail and port projects, but also passenger rail and multimodal projects.
- TIFIA and TIGER both provide broader eligibility for a variety of applicants, including private sector project sponsors that partner with public sector agencies. This facilitates well-developed project planning and more robust partnerships in project funding and delivery.
- These programs facilitate multi-jurisdictional projects of national and regional significance, including multi-state highway bridges and investments in corridors of national significance.
- As we implement these programs we are learning lessons and developing best practices that would be transferable in the event a national infrastructure bank were established.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO HON. POLLY E. TROTTENBERG

Question 1. Can you describe the steps that the U.S. Department of Transportation (DOT) is taking to ensure that the reforms included in the Moving Ahead for Progress in the 21st Century Act (MAP–21) are being promptly implemented in accordance with the bill, including providing any communication or direction regarding MAP–21 implementation, and lay out your plans to provide frequent updates to the authorizing committees on such progress?

Answer. DOT maintains a centralized database to track the progress of ongoing rulemakings in each operating administration, and we post reports on the Internet

each month informing the public of the status of our significant rulemakings. Senior leadership of the Department also regularly meet with each operating administration to be briefed on the current status of their rulemakings.

Upon enactment of MAP–21, DOT immediately began developing an implementation plan and timeline, assigning every MAP–21 action to the appropriate office. Provisions that could be implemented immediately, such as the expanded TIFIA program, were addressed first, while simultaneously laying the groundwork for implementation of provisions that were effective October 1.

The Deputy Secretary and I have spearheaded regular implementation meetings to engage OST and modal leadership. These meetings have fast-tracked discussion of emerging issues and facilitated efforts to resolve any problems that might have slowed down implementation progress. In light of MAP–21's significant programmatic changes and tight timeframes, DOT has maintained momentum, providing leadership, guidance and information through stakeholder meetings, webinars, and posted a vast array of material on Departmental websites.

Many MAP–21 provisions mandate reports to Congress on specific topics. In addition, DOT is making every effort keep Committee staff informed as implementation efforts progress. We have regularly notified Committee staff of upcoming informational or outreach sessions, guidance, and Federal Register notices related to MAP–21 implementation. We have also provided informational briefings upon request, and respond to Congressional inquiries on an ongoing basis.

Question 2. Can you please describe the Department's progress in expanding the Transportation Infrastructure Finance and Innovation Act (TIFIA) program as authorized under MAP–21? In your leadership role over the Office of Policy, what steps have been taken to handle the growth of the TIFIA program and the great demand from across the country for assistance under TIFIA?

Answer. Since the passage of MAP–21, we have taken a number of steps to implement the changes to the TIFIA program and expand the TIFIA Joint Program Office to meet increasing demand. We estimate that the $1.7 billion authorized for TIFIA in MAP–21 will allow the Department to provide approximately $17 billion in credit assistance and leverage an additional $20 to $30 billion of infrastructure investment.

On July 31, the Department published a Notice of Funding Availability in the Federal Register inviting project sponsors to submit letters of interest (LOIs) for TIFIA assistance on a rolling basis. Since that date, we have received LOIs for more than $14 billion in credit assistance to finance over $37 billion in total project costs. The Notice of Funding Availability also outlined important process changes that we have implemented within the Department to review LOIs on a rolling, first-come, first-served basis.

On a parallel track, we are working to ensure that the TIFIA Joint Program Office has the necessary staff to review applications and negotiate credit agreements. The TIFIA Office developed a staffing plan that is now being implemented. We are hiring financial and legal experts to serve in various functions within the TIFIA Joint Program Office, including loan origination and negotiation, credit analysis and budget, and portfolio monitoring.

In my office, my staff and I have been very involved in the implementation of TIFIA under MAP–21, working collaboratively with other offices within the Office of the Secretary and the Modal Administrations to ensure that the TIFIA program has the necessary policies and resources to respond to the growing volume of credit requests.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. POLLY E. TROTTENBERG

Strategic Freight Plan

Question 1. One of the goals of the Freight Policy Council is the development of a national freight strategic plan. I think you'd probably agree that that process should include robust input from industry, labor, state and local governments, and safety advocates. In Washington state, we take the approach that all the modes should work together to better our freight system as a whole—and I'm glad that is the approach that Secretary LaHood has adopted with the Council. Will you commit to holding designated outreach events outside of Washington D.C. to gather input on the national freight strategic plan?

Answer. As senior DOT officials travel, we are actively seeking opportunities to meet with stakeholders representing diverse interests and perspectives in this area to gain insights on the national freight strategies on freight related issues. Earlier this year, Secretary LaHood kicked off the DOT Freight Policy Council during a

visit to Washington State in Spokane and Seattle. In September of 2012, Secretary LaHood hosted a Freight Forum here in Washington, DC that included over 100 participants representing public and private sectors interested in freight related initiatives.

We are in the process of exploring opportunities for regional Forums during 2013. As other senior DOT officials travel around the country, they have been participating in DOT Freight Roundtables. These roundtables are designed as small interactive sessions with stakeholders with diverse perspectives. Just last week, we hosted three separate Freight Roundtables in Portland, OR; Sacramento, CA; and Chicago, IL. We will continue to conduct DOT Freight Roundtables through the spring of 2013. In addition, we are exploring opportunities to meet with targeted interests groups representing various modal interests, safety, environment and economic development over the next year. We will also be actively working with State DOTs and local MPOs to ensure their input along the way.

Question 1a. How will the Freight Policy Council ensure that all regions of the country have input into the development of the national freight strategic plan?

Answer. The Department recently held an on-line national dialogue that provided an opportunity for over 1,300 participants from across the country to exchange ideas on suggested elements for state freight plans and freight performance measures. There was representation from every state and 140 metropolitan areas. In addition, we also hosted a separate on-line dialogue with over 5,000 participants on all MAP 21 performance measures, which included unique insights on freight performance measures.

The Department has also used 'webinars' as a tool, providing an opportunity for participants to log in from anywhere in the country. In the past several months, we have hosted two specific webinars on Freight in America, offering over 500 participants the chance to ask questions to presenters and also submit unique insights using real time chat functions.

We will continue to use these tools in addition to face to face sessions to engage stakeholders on freight movement from around the country.

Question 1b. What is the U.S. Department of Transportation's timeline for beginning the freight strategic planning process?

Answer. We began work on freight strategic planning issues as soon as the legislation was signed by President Obama. The Freight Policy Council held its first meeting in late August. The "Chain Gang", an informal multi-modal working group originally formed to discuss freight policy issues, was re-purposed and expanded to serve as the staff of the Freight Policy Council. Now known as the MAP–21 Freight Implementation Team (MFIT), it is chaired by the Chief Economist of USDOT and staffed by designees from the OST Policy, FRA, FHWA, MARAD, FMCSA, FAA, and the St. Lawrence Seaway Development Corporation.

Preliminary guidance to the states on how to qualify projects for the 95 percent Federal funding match provided in MAP–21 was published in the Federal Register on October 15. The MFIT is working to develop performance measures for the conditions and performance report on the freight transportation system required within two years of the passage of MAP–21. Work began in August on the comprehensive truck size and weight study required by MAP–21. Work is also underway on the compilation of state laws covering truck size and weight and, specifically, exceptions to the current Federal size and weight limits. FHWA is working with other modal agencies and OST to develop the national freight network required by MAP–21. Guidance has been issued encouraging states to form State Freight Advisory Committees and to develop State Freight Plans that will inform the National Freight Strategic Plan required by MAP–21.

Question 1c. As part of the strategic planning process, will each freight industry sector be asked to identify freight chokepoints, major transportation corridors and gateways, intermodal connections, and opportunities for collaboration on infrastructure?

Answer. U.S. DOT is working with freight stakeholders in all the freight transportation modes to identify parts of the freight transportation system that are particularly important to the national economy. Stakeholders will also be asked to identify bottlenecks that inhibit the efficient performance of the freight transportation system, and to develop appropriate measures of conditions and performance of the freight system. We met with freight stakeholders in Washington, DC in September, and more outreach meetings around the country are planned. The purpose of these outreach meetings will be:

- To inform freight stakeholders about the freight provisions of MAP–21

- To involve the freight community in the process of selecting measures of condition and performance and developing a National Freight Strategic Plan
- To encourage states to form State Freight Advisory Committees and develop State Freight Plans

Role of the Under Secretary

Question 2. How do you view the role of the Under Secretary of Transportation for Policy in the implementation of the MAP–21 freight provisions?

Answer. The Office of Policy, under the direction of the Under Secretary, has primary responsibility for coordinating the Department's efforts to implement the freight provisions of MAP–21. A MAP–21 Freight Implementation Team, consisting of designees from several modal administrations plus the Office of the Secretary, has been assembled to address the various statutory requirements. It is chaired by the Department's Chief Economist, working at the direction of the Under Secretary. The Freight Implementation Team serves as staff to the Freight Policy Council. The Under Secretary also has broad responsibility for freight policy development and implementation within the Department of Transportation, beyond what is required by MAP–21.

Question 2a. How does that role relate to the leadership of the Freight Policy Council activities within U.S. Department of Transportation?

Answer. The Freight Policy Council consists of the Deputy Administrators of the Federal Highway Administration, the Federal Railroad Administration, the Maritime Administration, the Federal Motor Carrier Safety Administration, the Federal Aviation Administration, the Pipeline and Hazardous Materials Safety Administration, the Research and Innovative Technology Administration, and the St. Lawrence Seaway Development Corporation, along with the Under Secretary of Transportation for Policy, the Assistant Secretary for Transportation Policy, The Assistant Secretary for Budget and Programs, and Assistant Secretary for Aviation and International Affairs, and the General Counsel. It is chaired by the Deputy Secretary of Transportation. Staff from the Office of Transportation Policy, under the direction of the Under Secretary, supports the Freight Policy Council, along with designees from the other modal administrations.

Management of Different Modal Interests

Question 3. Your position is multimodal in nature—you will be the Secretary's top transportation policy advisor for a variety of modes, some of which have competing interests and jurisdictions. How do you intend to balance these different interests, especially with regard to multijurisdictional efforts (like the Freight Policy Council)?

Answer. Multi-modalism is an Obama Administration priority, and an important goal of mine at U.S. DOT. To promote a complete transportation system incorporating all forms of transport, I am dedicated to ensuring participation and collaboration between the numerous modes represented at U.S. DOT. Policies that affect all modes, such as safety, freight, and performance measures, require collaborative planning and cooperative decision making. By consistently bringing different modes to the table and working together to identify joint areas of concern and develop appropriate solutions, the Policy Office plays a leading role in guiding the Operating Administrations at U.S. DOT to work together and pursue an efficient, multimodal transportation system that balances multiple interests.

Over the past four years, we have had a steady track record of implementing multimodal efforts throughout numerous programs and policies. In 2009, the Department established the U.S. DOT Safety Council, taking a collaborative approach to safety across transportation modes. The Council brings together modal administrators, chief safety officers, and other departmental leaders to address DOT-wide safety challenges such as Safety Culture and safety data issues.

Also in 2009, the Policy Office announced the first TIGER discretionary grants as part of the Obama Administration's ARRA campaign. The TIGER program has since completed four rounds of national competition, awarding over three billion dollars to 218 innovative projects across the country. The TIGER effort has included every mode since its inception, and the Policy Office manages the TIGER process through close collaboration with the surface modal administrations for the evaluation, selection, implementation, and tracking of TIGER projects. Through collaborative decision making, the Policy Office funded projects that leverage private funding, demonstrate innovative project delivery, create economic opportunity, and greatly benefit communities and the Nation.

In the area of freight policy, Secretary LaHood established the Freight Policy Council in August 2012 to bring together senior leadership and modal administrators, as well as policy, budget, economic, safety, and research experts to oversee the implementation of MAP–21's freight provisions, including the development of the

National Freight Strategic Plan. The Department's 'Chain Gang' of freight experts from various modes also meets to coordinate the development of MAP–21 provisions. With input from various modes, we released Interim Guidance outlining U.S. DOT's recommendations for State Freight Plans and Freight Advisory Committees in October 2012, and are currently working to designate a National Freight Network and establish the National Freight Strategic Plan.

As the Department works to develop and implement national performance measures required by MAP–21, the Policy Office is working with each of the modes, stakeholder groups, and experts from numerous fields to develop mutually-agreed upon metrics and ensure that their adoption will lead to a more multimodal transportation system.

Moving forward, I am committed to continued collaboration across modes in relevant policy and program arenas, to ensure a multimodal national transportation system.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TOM UDALL TO HON. POLLY E. TROTTENBERG

Drunk Driving

Question 1. Ms. Trottenberg, this month thousands of families will celebrate the holidays without loved ones, without family members who were killed by drunk drivers. What is so tragic is that every drunk driving crash is 100 percent preventable.

The example of my home state of New Mexico offers lessons and hope for significantly reducing drunk driving fatalities nationwide. New Mexico uses a combination of enforcement and education efforts. One example is New Mexico's mandatory ignition interlock law for all DWI offenders.

Although Congress did not accept a similar interlock provision as part of MAP 21, I am pleased that legislation I authored to develop new technologies to reduce drunk driving crashes, the ROADS SAFE Act, did become law.

If confirmed, will you continue to support efforts to combat drunk driving nationwide?

Answer. Drunk driving is a nationwide tragedy, and as you point out, it is entirely preventable. That is why reducing drunk driving has been a priority for the National Highway Traffic Safety Administration (NHTSA) and the Department for many years. The Department uses a comprehensive strategy, which includes research, outreach, technology, and law enforcement, to reduce the toll of drunk driving. The Department has worked with New Mexico and other states to develop, test, and deploy effective countermeasures, including a state impaired driving leadership program that follows the successful New Mexico model. Because of the complexity of the drunk driving problem, this comprehensive approach is necessary to achieve lasting gains. However, with more than 10,000 alcohol-impaired driving fatalities each year, it is essential that we also keep investigating innovative new strategies such as the technology utilized in the Driver Alcohol Detection System for Safety (DADSS). Secretary LaHood has identified impaired driving as a key Departmental priority and if confirmed I will work diligently to implement the Secretary's vision.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. POLLY E. TROTTENBERG

Question 1. Last week the President signed into law Senator McCaskill and my bipartisan European Union Emission Trading Scheme Prohibition Act. Secretary LaHood has been a vocal opponent of the EU's overreach with ETS. Can you explain the DOT's plans for implementation?

Answer. Senator Thune, I would like to recognize this Committee's leadership on the EU ETS issue. The legislation you and Sen. McCaskill authored, passed by the Congress and signed by the President, played an important role in securing a temporary suspension of EU ETS to our air carriers. Because of this suspension, there is no immediate need for the Secretary to act under this legislation. In addition, we are encouraged by the progress on addressing global emissions in ICAO and we are working to accelerate this progress and finding a permanent solution to EU ETS. The Department remains committed to using its full scope of powers and influence to find workable and acceptable solutions to this issue internationally.

Question 2. What do you see as DOT's core objectives?

- If confirmed, one of your responsibilities will be coordinating the DOT's budget development. With the fiscal cliff, sequestration, and government wide spending

cuts looming how will your office identify areas within the DOT that can be eliminated, reduced or reformed while still meeting DOT's objectives?

- Do you have any specific examples you can provide the Committee?

Answer. Throughout my tenure at the Department of Transportation, I have worked to ensure that our budget requests support the success of our economy by investing in our Nation's most critical transportation needs. I have worked closely with the Assistant Secretary for Budget and Programs to develop budgetary policies and priorities that will create jobs by investing in our Nation's transportation infrastructure, spur innovation across our transportation systems, and improve transportation safety—our number one priority.

For example, the President's FY 2013 Budget request proposed several new initiatives that will improve program performance, better connect communities, and enhance safety. At the same time, the FY 2013 President's Budget identified $154 million in administrative cost savings including travel, advisory contracts, communications and employee IT devices, printing and reproduction that could be redirected towards our transportation priorities.

This is an ongoing effort. Over the past year, we have continued to identify savings across the Department, and I will continue to play a strong role in our investment decisions to ensure that we are most effectively using our resources to meet our Nation's transportation objectives.

Question 3. One of the goals of MAP–21 was "to do more with less." As DOT implements MAP 21 I think it is important that this be remembered, especially when promulgating regulations. For instance, one practical way to do this is considering the impact various rules and regulations have on different parts of the Nation. For instance, while congestion mitigation is essential is urban areas, it is less necessary in rural areas like my home state of South Dakota. For that reason, I think it would be ridiculous to require them to meet the same regulatory standards. If confirmed, can I get your commitment to remember these differences when promulgating rules and regulations and help our state DOT's succeed in "doing more with less."

Answer. DOT strives to issue rules that are carefully tailored to address specific issues, while providing performance-based standards, rather than prescriptive, one-size-fits-all standards, allowing regulated entities to find the ways to comply with our regulations that best meet their needs. I commit to working closely with all different parts of the country, from the most rural to the most urban, to ensure that our policies at USDOT account for their very different needs and priorities. Further, in accordance with the Small Business Regulatory Flexibility Act, and various executive orders, DOT considers ways to lessen compliance burdens on small businesses as well as State, local, and tribal governments.

Question 4. During Mr. Huerta's confirmation I asked him for an update on possible changes to the FAA's Part 77, also known as One Engine Inoperative (OIE). At that time no formal changes had been made, but discussions were ongoing. Can you provide an update on this?

As I said before, it appears to me this change would have an enormous impact on private property rights, building heights, urban development, and jobs. Will your office ensure that a cons-benefit analysis, with comments from stakeholders, is done and ensure economic impacts are considered before changes to OIE are made?

Answer. The FAA's goal in reviewing our airspace policy as it relates to planning for a critical engine failure on take-off (One Engine Inoperable, OEI) is to preserve the safety, efficiency and capacity of our Nation's airports and the surrounding airspace, as we transition to NextGen, and beyond. We are also committed to supporting airports in their efforts to be good partners to the communities they serve. The FAA is continuing to review this issue and will continue to work with and seek the input of interested parties to explore balanced public policy solutions, as well as assess their economic impacts to airports, airlines, and local development.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BOOZMAN TO HON. POLLY E. TROTTENBERG

Question 1. We must enhance and maintain our country's leadership in aviation. Earlier this year, we held a hearing on the competiveness of the U.S. Aerospace sector.

All witnesses generally agreed that the FAA and other agencies must work with stakeholders to modernize our air transportation system, and we know that collaboration leads to manufacturing job creation and consumer benefits.

One witness testified that some lost business opportunities are caused by delays in the FAA certification process. I am very concerned about these lost jobs and the

harm to our economy. Further discussion touched on TSA's ongoing procrastination with regard to the Aircraft Repair Station Security Rule. I have three questions:

First, what will you do to make progress on the FAA certification delays?

Answer. I recognize the issue of certification is of key importance in the aviation sector and the FAA has taken concrete steps to improve the process. Section 312 of the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 (Public Law 112–95) required the FAA Administrator, in consultation with the aviation industry, to conduct an assessment of the aircraft certification and approval process.

The FAA has developed a comprehensive implementation plan, along with a plan to measure the effectiveness of the recommendations which the Aircraft Certification Process Review and Reform Aviation Rulemaking Committee submitted to the Director of Aircraft Certification on May 22, 2012. Furthermore, the FAA has begun implementation of these actions which were required to begin no later than February 14, 2013, and which FAA monitors by other means.

The Aircraft Certification Process Review and Reform (ACPRR) Aviation Rulemaking Committee (ARC) submitted the following recommendations to the Director of Aircraft Certification on May 22, 2012:

1. Development of Comprehensive Means to Implement and Measure the Effectiveness of Implementation and Benefits of Certification Process Improvements
2. Enhanced Use of Delegation
3. Integrated Roadmap and Vision for Certification Process Reforms
4. Update Part 21 to Reflect a Systems Approach for Safety
5. Culture and Change Management
6. Process Reforms and Efficiencies Needed for Other AIR Functions.

The FAA has already initiated many activities as part of on-going, continuous certification process improvement efforts which are associated with the Committee's recommendations and will begin others to fulfill the intent of all of the recommendations.

Question 2. Second, will you proactively, through inter-agency dialogue and other means, encourage the TSA to take action on the Aircraft Repair Station Security Rule? If so, please elaborate.

Answer. As background, TSA was originally tasked with creating a repair station security rule in Sec. 611 of the VISION 100 legislation, passed in 2003. TSA was instructed to issue a final rule to "strengthen oversight" for all FAA certificated part 145 repair stations, located both domestically and abroad. The agency was afforded 240 days to issue the final rule, which elapsed without such action.

Next the "9/11 Commission Recommendation Act of 2007" mandated that the TSA issue the final rule within one year of enactment of the legislation (August 3, 2007). The bill gave the TSA until August 3, 2008 to issue the final rule or no new foreign repair stations would be afforded FAA-certification. Since TSA has not yet issued the final rule, Flight Standards has not performed an initial certification on a repair station outside the U.S. since August 2008. They remain in a queue, depending on the date on which their pre-application statement of intent (PASI) was filed and to which Flight Standards International Field Office they applied.

FAA and TSA have been working together to be prepared for the final rule. FAA has provided TSA access to our databases and provided information on the number of applicants in the cue, their locations, and the field office performing the certification.

Early in the process, TSA worked to develop the program and TSA inspectors accompanied FAA inspectors to repair stations. In preparation for the new security rule, the FAA has begun to meet more frequently to discuss the procedures for notifying when an applicant is ready for a security evaluation, how the program will be monitored and how FAA certification will be revoked or suspended, if warranted. Going forward, I will be tracking the progress of both agencies.

Question 3. Finally, what else would you do to promote the importance of the aviation sector, including manufacturing, in the Department of Transportation, in the international marketplace, and within the U.S. Government?

Answer. I strongly support the goal of a strong, healthy and globally competitive U.S. airline industry. At DOT we have worked to open markets, increase business opportunities for airlines and provide more travel options for consumers.

In the last four years we have signed Open Skies Agreements with Japan, Brazil, and Columbia as well as countless other countries. In Japan we have seen almost a 4 percent growth in passenger traffic. In Brazil, the market has grown 10 percent.

We have also granted anti-trust immunity to certain airlines alliances where we found that airlines and consumers would benefit.

DOT is also an active member of the President's National Export Intiative (NEI). Under the NEI, we have worked to formulate and implement strategies which will support exports of U.S. aviation goods and services in key markets abroad, not only aircraft, but the many components which support aviation infrastructure.

Through the APEC (Asia Pacific Economic Cooperation) Transportation Working Group, we are working on a business aviation initiative to allow this sector to reach its potential in the Asia-Pacific region, which should stimulate demand for U.S. manufactured aircraft.

Finally, we are working in ICAO to find a global approach to addressing greenhouse gas emissions from international aviation and solve the EU ETS dispute so that ETS does not apply to our carriers.

If confirmed, I will continue to work closely with airlines, airports, labor, and consumers to further open markets abroad to help the health of the industry and provide more travel options for consumers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO DR. MARK E. DOMS

Improving the Use of Economic Data

Question 1. Dr. Doms, the Economics and Statistics Administration (ESA) is a relatively small agency but one with enormous responsibility. Your office is the bookkeeper of the Nation's Gross Domestic Product (GDP) and the findings of the Bureau of the Census. The data you report has an enormous impact on the lives of all Americans. Additionally, as Under Secretary, you would serve as one of the government's chief economists.

As we continue to recover from one of the worst recessions in our Nation's history, good economic analysis is in particularly high demand. We need to understand American competitiveness, especially in our Nation's manufacturing sector. This Committee will be looking to your office to help us understand these pressing economic questions.

Question 1a. Given the current economic climate, what can the ESA do to better support American businesses and families? For instance, are there ways to better analyze or collect statistical information?

Question 1b. If confirmed, how do you plan to implement any of the changes you have articulated in your answer to the previous question?

Answer. I believe the Economics and Statistics Administration can best support American businesses and families by continuing to provide the highest quality analysis and statistical information about our communities and our economy. Good data is the bedrock of sound decision-making by our Federal and local leaders. ESA must effectively oversee and foster the work of America's two premier statistical agencies: the Census Bureau and the Bureau of Economic Analysis (BEA). The Census Bureau conducts surveys to fulfill its own Federal mandate, and administers dozens of key surveys for other Federal agencies such as the Department of Health and Human Services, the National Institutes of Health, the Bureau of Justice Statistics and the Department of Housing and Urban Development, to name a few.

The analytical work of the Bureau of Economic Analysis continues to improve the standard of economic analysis in our world. In the wake of the financial crisis and recession, BEA identified areas where existing economic data, in hindsight, fell short of providing a comprehensive view of what was happening to the economy. A series of proposals followed, collectively known as *GDP and Beyond,* which will increase the information available to policy-makers on the economic conditions of American households and small businesses.

If confirmed, I will champion the innovations of survey design, data collection and analytical rigor that the Census Bureau and the Bureau of Economic Analysis pursue with an eye towards cost and operational efficiency.

American Community Survey

Question 2. Dr. Doms, I strongly believe that good data is absolutely essential to developing good public policy and distributing billions of dollars of Federal funding to the right communities. This is why I strongly support the American Community Survey, which replaced the long form on the decennial census. This new survey provides more timely data than a 10-year update. I was dismayed when the House cut its funding this spring. I oppose any efforts to make the survey voluntary—it would decrease the quality of the data and increase the survey costs by millions. Do I have your pledge to protect the essential American Community Survey?

Answer. The American Community Survey (ACS) provides critical insight into the health of our great nation. I will, if confirmed, extend every effort to demonstrate to Congress and the American people how important ACS statistics are to helping policymakers, businesses, and local community leaders make informed decisions.

Bureau of the Census

Question 3. The Census Bureau is an essential agency in my judgment, and it needs to have strong support and a clear line of authority. There are many questions about pending proposals to change the structure of the Commerce Department. If confirmed, do you pledge to be mindful of the Census Bureau and protect its authority and its budget so the fundamental work of the decennial census, the American Community Survey, unemployment data, poverty data, and all its work will continue?

Answer. If I am confirmed, you have my commitment that I will continue to fervently protect the authority and independence of the Census Bureau and the critical work that it performs.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO DR. MARK E. DOMS

Question 1. Dr. Doms, the American Community Survey (ACS) provides crucial up-to-date information about the social and economic needs of communities. However, most people aren't aware that business leaders heavily rely on the ACS for demographic and socioeconomic data, using it as a tool for market evaluation and consumer segmentation.

While many businesses now use sophisticated and proprietary site and segmentation products from private firms, these products are built largely on a statistical and geographic foundation provided by the census.

As the chair of the Commerce Subcommittee on Competitiveness, Innovation, and Export Promotion, I'm interested in helping to build a competitive agenda to move forward and I think ensuring business leaders have access to this crucial decision-making tool, helps move that agenda forward.

Can you expound on the importance of and the role the ACS plays in business decisions and building our economy?

Question 1a. Are there things the Census Bureau can do to improve the accessibility and usability of the ACS for business leaders?

Answer. The American Community Survey (ACS) provides a high quality statistical view of our communities and our economy. The ACS provides a level playing field for all businesses. An individual who wants to start a small business or those self-employed have access to the same accurate information about their communities as a large or medium-sized employer that can afford the services of a site selection company. Retail businesses use the ACS to understand the characteristics of the neighborhoods in which they locate their stores along with determining the types of products they sell in their stores. There is no private sector substitute for ACS data for small and rural communities. Without the ACS, the United States business sector would face increased difficulty and risks in making decisions that support the Nation's economy.

The Census Bureau has launched a digital transformation that seeks to dramatically improve the way business leaders and the public access the estimates from the ACS. In line with the new Federal digital strategy, the Census Bureau has already made steady improvements to how users access official statistics. In July, the agency launched its first application programming interface (API) enabling developers to pull 2010 Census and American Community Survey statistics easily into their own web and mobile applications. Since launching this open data service, more than 1,700 developers have signed up to have access. In addition, the Census Bureau has incorporated all of the ACS data into several new data access and mapping tools. For instance, *QuickFacts* provides users of all levels ACS statistics and business information from the Economic Census side by side for any place in the Nation with a population of 5,000 or more.

If I am confirmed, I will continue to support the innovative work of the Census Bureau to provide broader, more agile Internet tools that are compatible with the new generation of mobile devices and further deploy search features that meet the needs of the novice and experienced business data user.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO DR. MARK E. DOMS

Question. Many low-income families struggle to make ends meet in New Jersey because it is a high cost-of-living state. But the Federal government does not produce an official statistic that measures geographic variation in the cost of living. That means that New Jersey families that cannot afford the basics may not be eligible for Federal help. If confirmed, what would you do to make sure Federal statistics take into account geographic variation in the cost of living?

Answer. Geographic variation in costs is an important issue and a challenging one to resolve with respect to economic measurement. Below I would note two statistical products that address geographic variation specifically and which may address the concerns you have raised.

First, the Bureau of Economic Analysis (BEA) has made great progress in the design and implementation of a cutting edge regional price parity index which will allow for the adjustment of key regional statistics. BEA has published prototype estimates of this index for the past two years and expects to publish a final prototype index in 2013. We expect this new index will become an official series beginning in 2014 with adjusted regional data following.

Second, for the past two years the Census Bureau has been providing research on a Supplemental Poverty Measure (SPM) that provides a new way to measure the well-being of families like those in New Jersey who live in high cost-of-living states. If confirmed, I will continue to support the research and distribution of these new statistical products that I believe states and local communities have already found very useful.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO DR. MARK E. DOMS

Census

Question 1. Dr. Doms, you will oversee the Census Bureau in your role as Under Secretary of Economic Affairs. The Census is critical for ensuring that communities have proper representation and the resources needed for health care, law enforcement and education. What new tools or technologies could potentially improve the accuracy and efficiency of the 2020 Census?

Question 1a. How can the Census Bureau harness new tools and lessons learned from the 2010 Census to improve the Census process moving forward?

Question 1b. What are the best ways to ensure an accurate and complete counting of Americans—especially those living in rural areas where census participation can be low and it is difficult for census workers to follow up with those who do not respond to census questionnaires?

Answer. Work is already underway at the Census Bureau to develop new methodologies for capturing interview responses and managing field operations through the use of mobile devices. In addition, the Census Bureau will offer an Internet response option, which provides opportunities to increase response, improve language support, and develop new innovations to address quality issues such as duplication and coverage improvement.

The Census Bureau also is exploring the use of administrative records (*e.g.,* tax, social security information, and data from other censuses and surveys), to inform about households that do not respond to the census.

The 2010 Census offers a wealth of data that is informing the design of the 2020 Census. For example, Census Bureau staff have matched the administrative records mentioned above to the entire 2010 Census universe to provide evidence for the potential benefits and challenges associated with using those records to support census operations. The Census Bureau is building a Knowledge Database from over one-hundred 2010 evaluation reports and audits developed by the Government Accountability Office, the Office of Inspector General, the National Academy of Sciences, and others to help guide research and development of the 2020 Census design.

The Census Bureau is exploring propensities to respond among rural populations and will tailor field operations to harder to reach populations that are less likely to respond to the census. In the 2010 Census, Census Bureau field staff interviewed every household in some of the areas of the country that are particularly difficult to enumerate. This included remote areas of Alaska, Northern Maine, and the Colonias of South Texas. As the country continues its expansion of broadband use, the Internet may offer new possibilities for better capturing rural populations in the Census.

Bureau of Economic Analysis

Question 2. As you know, the Bureau of Economic Analysis (BEA) strives to provide timely, relevant and accurate economic data to policy makers and the public. Do you have any thoughts on how to make BEA data more accessible and useful to public users, potentially through new open government tools or technologies?

Answer. BEA has recently made great strides to ensure that users have full and complete access to data. In 2011, the Bureau launched a new online Interactive Data System that combines easy and intuitive access with analytical tools like charting and graphing. In fact, this new system won the 2012 Driving Digital Government Award from the Center for Digital Government for its innovative use of technology to connect the public to data.

BEA has also worked with the Census Bureau on the recently released "America's Economy" mobile application and is also involved in a number of other efforts to connect data users to data. Additionally, this year the Bureau launched a blog designed to bridge the gap between technical publications and plain language explanations of the data.

If confirmed, I will continue to support BEA's efforts to reach its customers using leading edge communications tools.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO HON. MIGNON L. CLYBURN

E-Rate

Question 1. E-Rate is a vital program for ensuring students in even the most rural communities in our Nation enjoy the educational benefits and opportunities that broadband provides. During your first confirmation hearing, you committed to supporting and protecting the E-Rate program. And, at a hearing earlier this year, you promised not to support any effort to take funds from E-Rate, funnel funds through E-Rate, or use E-Rate legal authority for broadband adoption or other digital literacy initiatives. Will you renew those commitments in your second term to protect and support the E-Rate program?

Answer. Yes.

Incentive Auctions

Question 2. I was pleased to see that the FCC recently sought public comment on proposed rules to implement the voluntary incentive auction provisions of my public safety spectrum legislation. As you know, that legislation—which was generated out of this Committee—combined innovative spectrum policy with the creation of a nationwide, next-generation public safety network. Your colleagues on the FCC have publicly recognized this link. They have all acknowledged the need to make sure that these incentive auctions raise enough money to meet the goals set forth in the legislation—including funding for the nationwide public safety network. I know that developing these auctions will be a complex process, but do you agree that an important consideration for these rules must be providing sufficient funding for public safety?

Answer. Yes. Sections 6401 and 6413 of the Act direct that certain proceeds from the forward auction, must be deposited in the Public Safety Trust Fund for a national first responder network and public safety research. I believe that it is important for the Commission to design an incentive auction that can help provide funding for First Net and other public safety goals in the Act.

Media Ownership

Question 3. Shared services agreements enable multiple stations in a single television market to combine key aspects of their operations, including in some cases advertising sales, back-office functions, newsgathering operations, and even carriage negotiations with cable and satellite companies. These contracts are not public or commonly reviewed by the Federal Communications Commission, though, so it is difficult to judge their impact.

Given that broadcasters are stewards of the public airwaves, would you agree that the Commission should review the details of all shared services agreements (including local marketing agreements and joint sales agreements) to make sure that they are in the public interest? If it is found that shared services agreements are not in the public interest or harm consumers, would you commit to considering limits on these arrangements?

Answer. I agree that the sharing of certain services, like those mentioned in your question, may be the only means by which broadcast stations in smaller media markets are able to afford providing key functionalities. There are outlets unable to sin-

gularly support the overhead costs associated with news gathering, production, and advertising sales, and could be facing bankruptcy if they were forced to go it alone.

However, when the sharing of services results is a monotone, uniformity of news dissemination, and the combining of resources is to the detriment of original investigative reporting, the viewing public, I believe, suffers.

The FCC's draft Order on media ownership, currently under review by the full Commission, contemplates these concerns, and I am carefully reviewing the language to ensure that we have the proper safeguards in place to ensure that they are in the public interest.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO HON. MIGNON L. CLYBURN

Question 1. Does the Chairman's Draft Order Address the 3rd Circuit Remand on Diversity—Commissioner Clyburn, on November 14, Chairman Genachowski circulated his draft media ownership report and order to the other Commissioners. As reported by the press, the proposed rule on media cross ownership is very similar to the rule ordered by the Chairman's Republican predecessor, which the Senate in 2008 voted in favor of overturning.

There is no compelling reason for the Chairman to weaken media ownership rules. Last Thursday, I sent a letter to the Chairman expressing my disappointment with the draft order. I know other Senators have signed on to Senator Sanders's letter.

Question 1a. Commissioner Clyburn, do you believe the Chairman's draft order on media ownership satisfies what the Third Circuit Court of Appeals told the FCC it needed to address regarding women and minority ownership of broadcast outlets in its remand of earlier media ownership rules?

Answer. The draft Order you reference is currently on circulation, so I am unable to directly answer your question. However, as indicated by my December 3rd statement on our Form 323 report, I am working to ensure that the FCC does everything possible to address the Court's concerns in its remand.

Question 1b. Do believe the Commission has collected all the data it needs to address the Court's remand?

Answer. I believe that the data-gathering improvements the Commission has been working on related to broadcast ownership reporting and ongoing studies concerning the critical information needs of communities put us on a course to get the necessary ownership data in a comprehensive and up-to-date manner. However, as I stated in my answer to your previous question, the analysis of the data is what the Commission needs, and I feel that the draft Order on media ownership that we are currently considering represents the best vehicle for a forward-looking roadmap to examine the critical information needs of American communities and how consumers access news. I am working with the Chairman's office, those of my fellow commissioners, and the FCC's Media Bureau to make certain that such a path forward is included in the draft Order.

Question 2. Will the Chairman's Draft Order Fix the Problems of the Newspaper Industry—Commissioner Clyburn, do you believe that weakening the media cross ownership rule, making it easier for the owner of a daily newspaper to also own a television station or a radio station in the same market will cure what ails the newspaper industry today?

Answer. We are mandated by Congress to review every four years whether our current rules are necessary: (1) due to competition and (2) in the public interest. Some smaller entities have stated that further consolidation will help, as advertising dollars are migrating to Internet-based news sources leaving them unable to rely on a previously-plentiful revenue stream, while others state consolidation leads to multi-platform bundling which leaves independent voices weaker and unable to compete with a single property option.

However, should opportunities for limited cross-ownership be endorsed by the agency, the Commission must implement strong factors, tests and thresholds which must be fulfilled, should separate entities wish to consolidate.

Question 3. State of On-line News Reporting—Commissioner Clyburn, at the national level, do you believe that the state of online news reporting has reached the level of sophistication where it offsets what has been lost in recent years by the reductions in the journalism operations of traditional media?

Answer. While some studies suggest that many of the sources consumers rely on for their on-line news engagement originate from traditional media companies, with advertising dollars migrating toward a wider variety of news, opinion-editorial and

"infortainment" (information/entertainment) sites, revenue to traditional news companies is being diluted and the level of investigative reporting and local coverage have declined substantially.

Question 4. Potential Impact of Incentive Auctions on Women and Minority Ownership—Commissioner Clyburn, women ownership of full power commercial television stations is under seven percent nationally, while racial minorities own a little over two percent of these stations. Are you concerned that the upcoming incentive auctions may encourage women and minority owners of television stations to take the cash and exit the business, further reducing the diversity of television station ownership?

Answer. While I am personally troubled by the lack of diversity when it comes to full power properties, the most important word in the incentive auction authority Congress gave us is *voluntary.* Broadcasters have the option to participate in this engagement if they decide it is in their best interest. Chairman Genachowski has directed the staff to conduct this proceeding in a manner that improves the mobile and broadcast industries, and if minority and women broadcast owners choose to avail themselves of the auction and exit the broadcast industry, they are entitled to do so.

Question 5. Concern Over Impact of Progeny Waiver on Unlicensed User in 900 MHz Band—Commissioner Clyburn, in one of your speeches you called unlicensed spectrum one of the great spectrum policy innovations of the 20th century that has allowed for a new wave of technologies. I agree with your assessment.

In 1995, the FCC came out with rules for licensing spectrum for Multi-lateration Location Monitoring Service (M–LMS) right smack in the middle of the 900 megahertz (MHz) unlicensed band.

For over 15 years the band was unused by these licensees due to the technology not being mature and no business model. What flourished in the band was vibrant unlicensed innovation including Wireless Internet Service Providers.

Almost a year ago, the FCC granted a waiver to one of these licensees subject to demonstrating that its system will not cause unacceptable levels of interference to unlicensed devices that operate in the 902 to 928 MHz band.

The joint testing has wrapped up. My understanding is that the test results show that many unlicensed devices could not co-exist with the new service.

Given the intensive consumer and industrial use of these unlicensed frequencies and their importance to our economy and wellbeing, I would think the FCC will tread carefully.

I would not be surprised if this M–LMS licensee is allowed to move forward in the 4 MHz it has licensed, other M–LMS licensees might also consider seeking FCC permission to move forward. Then the issue of what is unacceptable interference becomes even more important, because if it is not done well, much of the existing unlicensed band with its large installed base of users will effectively not be able to be used anymore

Commissioner Clyburn, can you assure me that the FCC will take all necessary steps to ensure that if the FCC allows this new service to go forward, the public will not suffer the loss of use of 900 MHz unlicensed spectrum?

Answer. By way of background, Progeny is seeking to provide service in the 900 Mhz band which is shared among many users, including many unlicensed users. The Commission rules require that before commencing service, Progeny conduct field tests to show how its network might affect unlicensed operations. Under the Commission's rules, a prospective licensee must not cause "unacceptable levels of interference" to unlicensed operations. Progeny has submitted reports of these tests that currently, are under review by Commission staff, which has also asked for comment from all interested parties.

Question 6. 700 MHz Interoperability—Commissioner Clyburn, is it your understanding that the FCC wireless bureau engineering staff have indicated that there are not significant technical impediments to interoperability in the lower 700 MHz band?

Answer. The comments in the record raise two general technical issues with regard to interoperability in the lower 700 MHz band. First, whether one mobile wireless network can technically support two band classes: Band Class 12 for A Block licensees and Band Class 17 for B and C Block licensees. Second, whether there is any merit to the argument that, because A Block licensees are subject to potential interference from Channel 51 operations and E Block operations, until those interference threats are removed, an interoperability mandate will adversely impact the customers of B and C Block licensee.

On the first issue, paragraph 41 of the March 2012 Notice of Proposed Rulemaking, which the Commission unanimously voted to approve, makes the following

point. "Since the two Band Classes overlap in frequencies, we think it is likely that there are relatively simple, cost effective solutions that will allow a single network to accommodate devices from both band classes. For example, would the Equivalent Home Public Land Mobile Network file (EHPLMN) update in devices allow the LTE network to support both Band Class 12 and Band Class 17 devices"? While I prefer to keep an open mind as I review the record, that language suggests that the Commission believes that having one network accommodate both band classes should not be difficult.

On the second issue, involving potential interference that B and C Block licensees would face from Channel 51 and E Block licensees if required to be in a network with A Block licensees, the A Block licensees believe that they have provided the more persuasive technical analyses. In those technical analyses, the A Block licensees tested B Block and C Block handset devices currently available on the market and found that they did not experience harmful interference from the signals being emitted from Channel 51 and E Block licensees. The technical experts of the FCC should examine those technical analyses, as well as the analyses offered by the B and C Block licensees, and decide this issue.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. MIGNON L. CLYBURN

Question 1. Superstorm Sandy caused serious damage to telecommunications networks in New Jersey. These networks are vital for connecting families and coordinating emergency service during a natural disaster. But, as we have seen, they are also vulnerable to disruption and outages. What is the FCC doing to make sure our communications systems are better prepared for the next natural disaster?

Answer. The FCC staff took number of actions leading up to and following that horrific occurrence. We:

- Coordinated with the New Jersey Broadcast Association and FEMA to ensure New Jersey broadcast personnel could have emergency access to their broadcast facilities and priority access to fuel supplies for their generators. This enabled broadcasters in the hardest hit areas to stay on the air.
- Worked with DHS to ensure communications service providers (primarily wireless and cable providers) had priority access to two New Jersey fuel depots, to meet needs for generators and restoration crew vehicles. This was very important because, during Sandy, reliable access to fuel supplies was a major problem.
- Identified non-English speaking stations in New Jersey and provided the stations' emergency contact information and coverage maps to FEMA. FEMA used this information to help ensure non-English speaking stations could remain on the air and provide emergency information to the non-English speaking public.
- Coordinated with the New Jersey Public Utilities Commission to determine points of contact for major power companies in New Jersey and passed the information to communications service providers for coordinated restoration planning and execution. This was especially important to communication service providers because they rely to a great extent on the operation of commercial power.
- In addition, an international cable landing station in New Jersey had a generator malfunction that put its continued operation at risk. The FCC coordinated with DHS and found a telecom carrier that was willing to loan a generator to the landing station. As a result, the cable landing station remained operational throughout the ordeal.

Question 2. As you know, there is evidence that New Jersey's only licensed high-power television station, WWOR, has failed to live up to its obligations to serve the people of New Jersey. When you appeared before this Committee in 2009, you committed to reviewing this case quickly and thoroughly. Yet, more than three years later, and five years after its license expired, the FCC has taken no action on WWOR. When can we expect movement on this issue?

Answer. It is my understanding that WWOR–TV's license renewal application is currently pending, and is contested by several parties. The FCC's Media Bureau issued a Letter of Inquiry regarding the issues of concern last year, and received WWOR's response in April of 2011. License renewal applications are normally handled at the Bureau-level and thus not voted on by the Chairman and commissioners, but I am told that there are other issues associated with the proceeding, including

cross-ownership, and the Bureau is working to resolve all of the issues simultaneously.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO HON. MIGNON L. CLYBURN

Question. As a former prosecutor, I've seen firsthand the critical contributions public safety communications officials make to public safety on a daily basis—helping to save lives and bring criminals to justice.

Consumers in the U.S. are increasingly reliant on text messages, photos and live video calls as smartphones and tablets continue to dominate the mobile market. However, many are frustrated that these rich means of communications cannot be used in an emergency. The importance of emergency services is why I serve as the co-chair of the Congressional NG911 caucus.

The FCC should be commended for the important steps already taken to accelerate the development and deployment of next generation 911 technology, but more work needs to be done.

There has been a lot of news lately of the current 911 network experiencing failures. One of the possible benefits of NG911 should be more redundancy and backup systems when traditional voice networks fail.

What do you think the FCC can do while it looks at NG911 to ensure we create a better and more effective back up to 911 networks in the event of a failure?

Answer. NG911 networks will be more resilient by design than the current architecture and offer more capabilities to enhance public safety. It is a Commission priority, however, to ensure the resilience of 9–1–1 services today, even as we plan for the NG911 networks of the future.

To that end, the Commission staff has been working with diverse advisory committees like the Communications Security, Reliability and Interoperability Council (CSRIC) to develop best practices that will help make 9–1–1 networks more resilient and to better plan for natural and manmade disasters. These best practices recommend diversity of all network elements involved in completing a 9–1–1 call. The Commission has also routinely monitored the performance of carrier networks serving Public Safety Answering Points (PSAPs) through the Commission's outage reporting systems. During emergency events, Commission staff work actively with carriers making these reports to assist in identifying problems and remediating them as quickly as possible.

Some recent natural disasters, however, have demonstrated that the resilience of current 9–1–1 networks certainly is not uniformly at acceptable levels. When the derecho struck this area on June 29, it left in its wake more than 2 million people who were unable to contact 9–1–1 for varying periods of time due to carrier network problems. That is unacceptable. The Commission's Public Safety and Homeland Security Bureau is preparing a report that looks at that experience and may recommend action steps to foster greater and maintain greater resiliency of the networks that connect people to 9–1–1 service. I am also looking forward to the in-depth inquiry that the planned hearings on Superstorm Sandy will facilitate, and will closely evaluate the information we obtain.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO HON. MIGNON L. CLYBURN

Digital divide on Tribal lands

Question 1. The mission of the Federal Communications Commission is to make communications services available to all the people of the United States. However, the first people of the United States—Native Americans—face a significant digital divide on Tribal lands.

Most people probably cannot imagine life without a telephone. Yet today more than 30 percent of households in Indian Country do not have access to basic telephone service. Broadband access is much worse with probably more than 90 percent lacking broadband. These statistics do not truly convey the hardships created by this lack of telecommunications service. Imagine not being able to call an ambulance when you or someone you love is in medical danger. Phones and broadband also help keep friends and family members in touch when they are far apart. Imagine not being able to speak with a loved one who is serving in the military and won't be home this holiday season.

Although Tribal lands are among the least connected, this is precisely where modern communications technologies can help the most. By overcoming physical dis-

tances and geographic isolation, broadband can help improve economic development, education, and access to health care.

I know you share my view of the importance of this issue, and I am pleased that the Commission is paying particular attention to this challenge. There is a new Office of Native Affairs and Policy to help work with Tribes on a government-to-government basis. The recent Universal Service order proposes a Tribal Mobility Fund to expand wireless access. It will also require engagement with Tribes. These are welcome steps in the right direction.

If reconfirmed, will you seek to ensure that the Commission continues to work with Tribes and telecommunications carriers to tackle the digital divide facing so many Native American communities?

Answer. Yes, I agree with your statements, and have been working closely with our Office of Native Affairs and Policy, to ensure that our reforms provide the means for much needed voice and broadband services in Indian Country.

Accelerating broadband deployment to unserved households

Question 2. Ms. Clyburn, I know from your first confirmation hearing in 2009 that you believe that universal service reforms should enable all Americans, regardless of where the live in the country, to have meaningful access to broadband.

I understand that the USF reform process is still underway and will take several years to complete. But I am concerned that much of the funding reserved for broadband deployment under the Connect America Fund (CAF) phase I will go unspent while there are still many New Mexican households that lack broadband access. In September, Senator Bingaman and I wrote Chairman Genachowski to ask the FCC to "work swiftly to find a way to use all currently available Connect America Fund (CAF) resources to meet our Nation's digital divide challenge." The letter also asked the Commission to "consider proposals from price cap carriers serving New Mexico to deploy broadband immediately to the least-expensive unserved households."

What more can the FCC do to help accelerate broadband deployment to unserved communities while the Connect America Fund (CAF) phase II is still under development?

Answer. Recognizing among other facts, that over 80 percent of the more than 19 million Americans unserved live in price cap territories, the Commission provided for two phases of funding to make broadband-capable networks available to as many locations as possible in those areas. In Connect America Fund Phase I, the Commission froze existing high-cost support for price cap carriers and provided up to $300 million of additional, incremental support in 2012, in order to advance deployment of broadband-capable infrastructure while it implements Phase II. Then in Phase II, the Commission has provided for up to $1.8 billion to be spent each year, over a period of five years, to further advance deployment of broadband-capable infrastructure and sustain services in price cap territories through a combination of a forward-looking cost model and competitive bidding. The Commission directed the Wireline Competition Bureau ("Bureau"), to develop the cost model for CAF Phase II, and the Bureau is expected to complete its work in 2013.

Of the initial $300 million in Phase I incremental support allocated to price cap carriers to support the deployment of broadband-capable networks to currently unserved locations, approximately $115 million was accepted. A number of carriers requested that the Commission either waive or reconsider certain of the build requirements in order for them to accept the full amounts available to them. The Commission recently adopted a Further Notice of Proposed Rulemaking concerning CAF Phase I, wherein we seek comment on two alternative approaches to advancing our broadband objectives in price cap territories, using the remaining 2012 Connect America Phase I funding. Under the first alternative, we propose to combine the remaining funding from the first round of the Connect America Fund into any future rounds of Connect America Phase I funding, and to revise the Phase I rules to expand the definition of eligible areas, adopt a process to update to the National Broadband Map, and alter the metric used to measure build-out. Under the alternative proposal, remaining funds from the first round of Phase I would be added to the budget for Phase II.

One way to accelerate broadband deployment pending Phase II, would be for the Commission to adopt modifications to CAF Phase I so that more unserved locations are built, while Phase II is under development. I would support an Order that proposes such action, as long as we continue to ensure that we meet the overall goals of our reform discussed in the USF/ICC Reform Order, including using the limited funds in an efficient and effective manner.

Support for low-income persons without broadband

Question 3. The Commission has issued rules to reform how universal service funds will support building out broadband networks in rural areas. But we know that having broadband available where you live is not the only aspect to tackling the digital divide. People need to see the value of having it. And they need to be able to afford to pay for it.

The universal service Life Line and Link Up initiatives have helped many people with low incomes get basic telephone service. In rural Tribal areas, Enhanced Life Line and Link Up help not just with adoption rates but also service deployment to some high cost areas where many potential customers could not afford phone service.

In addition to the Commission's efforts, some cable and phone companies have committed to offering reduced price broadband options for certain low income families.

Could you share your thoughts on how the Commission can use universal service initiatives, and also work with private companies, to increase broadband adoption, particularly among people with low incomes?

Answer. As you note, a number of companies have voluntarily committed to expanding broadband availability to low-income consumers through adoption initiatives. I applaud these efforts as one-third of Americans have not adopted broadband at home, and for those who are low-income, affordability is a critical factor that prevents them from adopting. The Commission recognized this in our Lifeline Reform Order voted earlier this year, and we took two important steps. First, we established a broadband goal for the Lifeline program. Second, we established a pilot program for broadband service to help the Commission determine how to move Lifeline from a telephone-only subsidy to supporting broadband service for low-income consumers. The Wireline Competition Bureau is currently considering those applications to participate in the pilot, and I expect that they soon will be making decisions about those projects that will be selected to participate. I anticipate that after the 12-month pilot program, the Commission will have the information it needs to move Lifeline from a telephone-only program to broadband.

Support for telemedicine

Question 4. New Mexico is a rural state where many rural communities are not only underserved when it comes to in communications, but also underserved in health services. We have some great folks at the University of New Mexico and in our hospital systems who are working hard to improve rural healthcare by using new innovative telehealth technologies.

The Government Accountability Office has criticized the FCC's management of the Rural Health Care Program. Some of the telemedicine proposals contained in the FCC's National Broadband Plan also seem to be on hold at the moment. I realize that the FCC is engaged in substantive reform in areas such as universal service. But telehealth is another area that should be a priority.

If reconfirmed, will you support efforts to improve and increase telemedicine opportunities, especially for rural communities?

Answer. Yes, telemedicine has been a priority for me because I have seen firsthand the life-saving benefits and cost savings telemedicine provides to those who live and work in rural America. I am happy to report that the FCC staff has done a tremendous job of evaluating our rural Healthcare Pilot Program. They recently published a report on the lessons learned including how broadband can lower the cost and improve the quality of healthcare, among many other benefits. The Chairman has circulated for the Commission meeting in December, an Order which takes the lessons learned from that Pilot Program and proposes to establish a Healthcare Connect Fund. I am happy to support this Order, as I expect it will promote telemedicine in rural areas and will lead to significant cost savings, and more importantly, save lives.

Importance of broadcast TV and Radio

Question 5. Today, there is a lot of excitement about mobile broadband, which puts the power of the Internet into the palm of your hand. I am amazed by what new smartphones and tablets like the iPad can do.

Yet, with all the excitement about new mobile technologies, it is easy to forget that broadcast TV and radio are truly the first "wireless" technologies. They continue to play a valuable role today. Not everyone can afford cable or satellite TV. Not everyone has access to the Internet at home.

Free broadcast TV and radio are especially important in times of emergency. For example, when northern New Mexico faces severe winter storms or summer forest fires, people turn to their local broadcasters for the latest weather and safety infor-

mation. Outside of emergencies, local businesses also appreciate how advertising on local broadcast stations can help them reach customers in their communities.

Can you share your views on the value of over-the-air broadcasting and the importance of its role in an evolving telecommunications landscape?

Answer. I have long proclaimed that the importance of over-the-air broadcasting cannot be overstated. Recent research indicates that the number of Americans relying on it increased from 46 to 54 million in the past year, and that young adults, minorities and lower-income families are the primary viewers. Further, there is a growing trend toward canceling cable subscription service and using over-the-air TV paired with over-the-top Internet content viewing, referred to as "cord-cutting". Although there are innumerable new alternatives to broadcast television, by most accounts it is still the most preferred and reliable means for the American public to access news, content and public safety alerts.

Call completion problems in rural areas

Question 6. Ms. Clyburn, I joined with many of my colleagues in sending a letter to Chairman Genachowski expressing concern about call completion problems in rural areas, including in New Mexico. This is not simply a matter of annoyance for affected telephone users. It can mean missing a call during an emergency. I know you responded already orally to questions about this issue during the hearing.

Could you please restate, for the written hearing record, what you believe that FCC can do to finally resolve the problem of rural call completion issues?

Answer. This issue has been of real concern to me due to the impact it can have on rural economies and the public's safety if calls can't go through. The Commission is actively engaged in finding a solution as quickly as possible, and I continue to press our staff to work quickly, given the significance of this issue. I have been encouraging all carriers and customers experiencing call completion problems to use the real-time information tools the FCC has made available to help us determine the cause and parties involved in order to resolve individual issues more quickly.

To the extent that this issue is about paying high access rates in rural areas, the major ICC reform we voted last year is bringing those rates down over time and this issue should not persist long-term. As for the short-term problem, our USF/ICC Reform Order also confirmed that carriers cannot block, choke, or reduce or restrict traffic in any way, and the Bureau followed up with a second Order that clarifies that originating carriers can be held liable for knowing that there are completion issues and not correcting them.

Our Enforcement Bureau is actively investigating this serious matter. The staff is collecting real-time information to spot patterns and resolve the connection issues, but they also are investigating particular carriers and their practices. I continue to communicate with the Chairman's Office and our staff about rural call completion issues frequently and will continue to do so until this issue has been resolved.

Media Ownership

Question 7. The FCC seems to be poised to adopt media ownership rules at a time of increasing media concentration. Congress tasked the FCC with promoting localism and diversity in America's broadcast system. Yet there are low levels of female and minority-owned media outlets in New Mexico and nationwide.

What policies would help create more opportunities for women, Hispanic and other minority-owned media outlets to flourish in New Mexico and across the country?

Answer. Female and minority-owned broadcasters cite lack of capital as the paramount barrier to remaining viable and acquiring properties. Countless entities have exhausted options in terms of financing, are out of ideas, and are in crisis (bankruptcy).

The Minority Tax Certificate, which the FCC adopted in 1978, offered companies an incentive which resulted in notable increases of minority media ownership. The policy allowed companies to defer capital gains taxation from the sale of media properties to under-represented communities. As a result, 364 tax certificates and 200 media transactions exceeding $1 billion in value were realized until Congress repealed the Tax Certificate Program in 1995.

I am hopeful that Congress takes another look at what worked best with this tool, address any issues which proved problematic, reinstitute a revised framework, and join the FCC in exploring options to break down barriers to entry for small businesses interested in operating in the broadcast space.

Question 7a. Would you support changes to media ownership rules that undermine established goals of increasing ownership diversity?

Answer. No I would not.

Prison Phones

Question 8. Could you explain more about your work related to prison phone rates, an issue which has recently received public attention and scrutiny?

Answer. This issue has been pending before the Commission in a Petition for Rulemaking for almost a decade. Families and friends of prisoners have asked that the Commission ensure that they have access to fair prices when speaking with their incarcerated loved ones over the phone. Studies show that connections with family and friends are important in helping lower recidivism rates, and it is typical for the families of prisoners to pay the bulk of the cost of these calls. This is a particular hardship because families often are low-income, and are unable to visit their loved ones due to the time, expense, and in many cases, the prison facilities are located great distances from their homes.

I have met with some of the petitioners and their counsel, and have heard stories of rates that can be as high as $4.95 to connect, plus 89 cents per minute for an interstate, long distance call. A typical 15 minute call can cost up to $17.

I have been working with the Chairman for a number of months to move this proceeding, and am happy to report that he has circulated a Further Notice to consider what actions the Commission can take to address these high rates. By statute, the Commission has an obligation to ensure interstate rates are just and reasonable, and I look forward to working with my colleagues and all interested parties to reviewing these rates and ensuring that we have fulfilled that obligation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK BEGICH TO HON. MIGNON L. CLYBURN

Question 1. Commissioner Clyburn, in your written and oral testimony before the Senate Committee on Indian Affairs this summer, you said that the Federal Communications Commission's Universal Service cost model would account for Alaska's relatively higher costs of broadband deployment. Specifically, you highlighted "the unique challenges of serving remote areas of Alaska" and explained that "we included an Alaska specific variable to reflect different costs within that area." After that hearing, I discovered that the FCC's cost model not only doesn't accommodate Alaska's higher costs, but penalizes Alaska by assuming it is cheaper to serve than the rest of the country. Given this fact, would you like to correct your previous testimony?

Answer. The point I was making in my testimony is that we took great strides in balancing numerous objectives and concerns in our reform, including the unique circumstances of providing service on Tribal Lands and in Alaska. In particular, the Bureau included variables for Tribal Lands and Alaska in its regression analysis for rate-of-return carriers' high cost loop support (an $800 million support mechanism). Interested parties continue to raise concerns about that analysis, and my office has been engaged with them as they discuss their varied issues. This dialogue has been fruitful, and I understand that the staff is preparing an Order to further address those concerns. I look forward to reviewing that Order to ensure that we are doing all we can to revise our reforms where necessary, while meeting the overall goals discussed in the USF/ICC Reform Order, including using those limited funds in an efficient and effective manner.

Question 2. Do you share the concerns regarding the USF Transformation Order recently expressed by Commissioner Rosenworcel in her concurring statement issued with the Commission's Fifth Order on Reconsideration of the USF Transformation Order?

Answer. My understanding is that Commissioner Rosenworcel has some concerns about the regression analysis for the rate-of-return carriers' high cost loop support mechanism. My office has been engaged with the parties as they discuss their varied issues with the analysis. This dialogue has been fruitful, and I understand that the staff is preparing an Order to further address those concerns. I look forward to reviewing that Order to ensure that we are doing all we can to revise our reforms where necessary, as we meet the overall goals of the reforms discussed in the USF/ICC Reform Order, including using the limited funds in an efficient and effective manner.

Question 3. Specifically, Commissioner Rosenworcel stated: "This agency's reforms to the high-cost universal service system are extremely complex. I fear that this complexity can deny rural carriers dependent on them the certainty they need to confidently invest in their network." Do you agree?

Answer. See my response immediately above.

Question 4. Before the FCC issued its USF Transformation Order in November 2011, a group of 29 Senators and myself wrote in April, 2011, to Chairman Genachowski urging him that reform proposals must strike a balance to protect the investments that have already occurred with the need to overhaul the USF programs. When the Order was adopted, Commissioner Clyburn, you issued a concurring statement in which you said: "we have in place a waiver process that is firm, predictable, yet fair," and you added that this waiver process would "avoid inadvertently harming the success we have already achieved through our legacy system." However I have heard from many rural carriers that the Order has harmed these carriers and denied the certainty that any business requires to make investments.

If you are reappointed, what changes in the Transformation Order would you commit to pursue to make certain that the Commission's process is fair and predictable in a way that ensures rural carriers are not deprived of the opportunity to recover lawful investments and expenses they have already incurred in the provision of universal service before the new rules were adopted?

Answer. The USF/ICC Reform Order reflected a bipartisan, unanimous, and balanced agreement on a set of complex issues that the industry and the Commission have attempted to reform for a decade. We inserted more fiscal discipline and responsibility in meeting America's broadband and voice needs, but recognized that as we implement the Order, adjustments may be necessary. In that vein, we have made several modifications over the last year. In addition to numerous Bureau level Orders, the Commission has issued five Orders on Reconsideration, that consider a number of issues including giving companies more time to adjust to certain provisions. Throughout this process, I have welcomed constructive dialogue with the parties impacted by the reform, and believe that these productive discussions will continue to ensure that we will meet our overarching goals of ubiquitous, state of the art, broadband and voice services.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. MIGNON L. CLYBURN

Spectrum Crunch

Question 1. Ms. Clyburn, as you know, many in the wireless and telecom industry are very concerned about the need for additional spectrum given great consumer demand for wireless services. Some recent economic reports have concluded that unleashing 300 MHz of spectrum for mobile broadband by 2016 would spur $75 billion in new capital spending, create between 300,000 to 770,000 new jobs and add $230 billion in GDP. When you look at the entire wireless ecosystem and all of the economic benefits that are derived from this type of investment, it is no wonder that this has been one of the few good-news stories of the U.S. economy lately. Clearly, given the rising importance of this segment of the economy to our overall economic health, the work the FCC does in this domain must be done very carefully, because mistakes made by the FCC could result in the stifling of this one dynamic area of our economy. I believe that we need to do more to identify new spectrum and get it into the hands of those who will invest and continue to build robust wireless networks.

Consistent with the President's call for an additional 500 MHz of spectrum, how do we get more spectrum to market quickly and avoid the pitfalls of kicking the can down the road?

Answer. We will be better equipped to realize those objectives by taking the following actions: (1) repurpose spectrum to flexible use by removing regulatory barriers—examples WCS and AWS–4; (2) conduct traditional auctions—like H block; (3) conduct new types of auctions—an example being the TV bands incentive auctions; and (4) explore innovative approaches, such as sharing using databases—for example, TV white spaces and 3.5 GHz.

Universal Service Fund (USF) Contribution Reform

Question 2. Ms. Clyburn, an important issue with respect to Universal Service Fund (USF) Reform that has not yet been addressed is the industry contribution mechanism that pays for USF subsidies.

Ms. Clyburn, what are your views on concluding contribution reform during your tenure as Commissioner? Do you believe contribution reform should be concluded in a timely fashion, say within the next year?

Answer. As you know, since the release of the National Broadband Plan in 2010, the FCC has been in process of reforming the Universal Service Fund ("USF") programs to take into account the importance of broadband availability, both deployment and adoption, to our Nation's citizens, including community anchor institu-

tions. We have voted significant reforms for the E-rate program, the high-cost program, and most recently the Lifeline program under Chairman Genachowski's leadership. Our reforms also address the continuing availability of voice service that consumers rely upon every day to communicate.

Earlier this year, the Commission approved a Further Notice seeking comment on contribution reform. We sought comment on a variety of options, and while there is wide agreement that the Commission should reform the contribution side of the USF equation, there is very little agreement on how the Commission should do so. At this time, I believe that we lack sufficient, empirical data that supports any particular approach. I have encouraged interested parties to provide us with the data that supports their stated positions and to collaborate in order to build consensus, as I believe as you do, that contribution reform is important.

In my time at the Commission, I have observed that it is often the case that the Commission's proceedings are advanced when interested parties are engaged, not only with the policymakers, but with one another to find common ground. You also asked about timing. As you know, the Chairman sets our agenda, so it's difficult for me to predict when a Reform Order may be circulated, but I remain engaged with all interested parties in working towards a resolution as quickly as possible.

Long Distance Call Completion Problems in Rural America

Question 3. Ms. Clyburn and Dr. Wright, yesterday, I along with several other Senators sent a letter to the FCC concerning the issue of call completion problems in rural America. We have heard from many constituents regarding the persistent problem of some long-distance telephone call not being completed to consumers in rural areas. I am concerned about public safety and worry that it's only a matter of time before this situation leads to tragedy when a rural customer is unable to complete an urgent call. This is an issue where the FCC and the FTC may have to collaborate on investigating the issue of any providers failing to properly complete calls to rural areas.

What has the FCC and the FTC done in relation to this issue? Will each of you commit to working together in this area to examine all possible causes?

Answer. This issue has been of real concern to me due to the impact it can have on rural economies and the public's safety if calls can't go through. The Commission is actively engaged in finding a solution as quickly as possible, and I continue to press our staff to work quickly, given the significance of this issue. I have been encouraging all carriers and customers experiencing call completion problems to use the real-time information tools the FCC has made available to help us determine the cause and parties involved in order to resolve individual issues more quickly.

To the extent that this issue is about paying high access rates in rural areas, the major ICC reform we voted last year is bringing those rates down over time and this issue should not persist long-term. As for the short-term problem, our USF/ICC Reform Order also confirmed that carriers cannot block, choke, or reduce or restrict traffic in any way, and the Bureau followed up with a second Order that clarifies that originating carriers can be held liable for knowing that there are completion issues and not correcting them.

Our Enforcement Bureau is actively investigating this serious matter. The staff is collecting real-time information to spot patterns and resolve the connection issues, but they also are investigating particular carriers and their practices. I continue to communicate with the Chairman's Office and our staff about rural call completion issues frequently, and I would be happy to coordinate and work with the FTC on this matter if that agency believes it should be involved.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO HON. MIGNON L. CLYBURN

Question. In your March 22, 2012, statement in support of the Commission's issuance of a Notice of Proposed Rulemaking regarding lower 700 MHz interoperability, you said *"This NPRM provides sufficient notice about the rules the Commission might adopt if the industry does not achieve true interoperability across the lower 700 MHz band. At a minimum, those are the goals the voluntary solution should achieve. We need to quickly arrive at an appropriate method to measure the progress of those efforts. If sufficient progress is not being made, we should not hesitate to adopt these proposed rules. I look forward to an industry solution, or the adoption of rules, by the end of this [2012] calendar year."*[1] Do you still desire to

[1] *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0321/FCC-12-31A4.pdf*

see the FCC take such action before year-end? If so, what steps are you taking to make that happen?

Answer. I stand by my statement. We initiated the Lower 700 MHz Interoperability proceeding to address this problem and expressed the Commission's preference that the relevant wireless companies work towards a voluntary resolution. I agree that such an approach can offer the market greater flexibility and would limit the Commission's involvement. But I am hearing that the industry is not any closer to a resolution than it was in March and this troubles me greatly. In the coming weeks, expect enhanced engagement from our Office on this front, because we are committed to bringing greater efficiencies and opportunities to the commercial market.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROY BLUNT TO HON. MIGNON L. CLYBURN

Question. I understand that USF/ICC reform has a goal of dispersing of $1.8b in 2013 to support delivering broadband to consumers in very high cost areas served by price cap companies to bridge what is often referred to as the "rural-rural divide." However, I understand the disbursal of those funds is dependent on the Commission's development of an economic model. What is the status of the development of that model, and progress toward implementing CAF Phase II? And what are the Commission's plans for investing that money in the event the model is not completed in time?

Answer. In its USF/ICC Reform Order, the Commission directed the Wireline Competition Bureau ("Bureau") to develop the cost model for CAF Phase II (the "Connect America Cost Model"). Here is an update on the actions the Bureau has taken to date on development of the Connect America Cost Model:

In early 2011, the Bureau released a Public Notice, inviting interested parties to submit proposed forward-looking cost models. In response, parties submitted two separate models into the record, and on June 8, 2012, the Bureau sought comment on these models as well as "on a number of threshold decisions regarding the design of and data inputs to the forward-looking cost model."[1] The Bureau also hosted an in-person workshop in September 2012 to discuss the design and mechanics of the cost models in the record and, more recently, commenced a virtual workshop soliciting input on a variety of topics related to the development and adoption of the cost model.

The Administrator of the Universal Service Fund, the Universal Service Administrative Company (USAC), has procured the services of a contractor to assist with the public hosting, execution, and support of the Connect America Cost Model, under policy direction from the Commission. On December 11, 2012, the Bureau announced the availability of version one of the Connect America Cost Model, which provides Commission staff and interested parties the ability to calculate costs using a variety of different inputs and assumptions. While version one of the Connect America Cost Model is similar to the CQBAT model submitted into the record by the ABC Coalition, it contains a number of key differences, including an estimate of the cost of providing not only broadband services, but also voice services.

The Bureau has emphasized that it has not adopted this version of the Connect America Cost Model, and that the inclusion of various capabilities does not represent a preliminary finding about the approach that the Bureau will ultimately adopt in this proceeding. The Bureau will continue to develop the cost model platform and inputs before finalizing and adopting a forward-looking cost model for Connect America Phase II as directed by the Commission in the USF/ICC Reform Order. The Bureau anticipates that a second version of the Connect America Cost Model will be available in the coming weeks and will include an update to 2010 census geographies and updated SBI data. The Bureau will shortly start soliciting input in the virtual workshop on whether there are any other functionalities or capabilities that should be added to the Connect America Cost Model platform.

After an opportunity for further public comment, the Bureau will adopt an order at a subsequent date in 2013, that adopts a final version of the Connect America Cost Model that will be used for purposes of estimating support amounts in price cap areas. The Bureau has encouraged interested parties to access the Connect America Cost Model (version one and any subsequent version) to provide input on whether it provides reasonable estimates of forward looking efficient costs and what

[1] *Wireline Competition Bureau Seeks Comment on Model Design and Data Inputs for Phase II of the Connect America Fund,* WC Docket Nos. 10–90 and 05–337, Public Notice, 27 FCC Rcd 6147 (Wireline Comp. Bur. 2012).

adjustments, if any, should be made before the Bureau finalizes and adopts the Connect America Cost Model.

At this time, I do not anticipate that the Bureau will be unable to complete its work on the Connect America Cost Model in 2013. Nonetheless, should an unforeseen delay occur, then the price cap carriers would continue to receive frozen USF support and CAF Phase I funding, if elected, for broadband deployment. As you probably know, the Commission has an NPRM pending to consider revisions to CAF Phase I which potentially could lead to more carriers electing to use the CAF Phase I money to deploy broadband to unserved consumers.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARCO RUBIO TO HON. MIGNON L. CLYBURN

Question. The FCC plays an important role in licensing spectrum for telemetry, tracking, and command for U.S. space launch. I am concerned that the FCC may impose duplicative requirements that are outside the scope of spectrum licensing and that are already regulated by other Federal agencies, which could significantly impact the ability for U.S. launch services providers to receive timely, streamlined, and consistent consideration of licensing applications. Given the growing role of the commercial space launch sector, particularly in Florida, and the need to restore U.S. competitiveness in the international launch market, what actions does the FCC plan to undertake that will streamline the regulatory licensing process to ensure the viability of this growing sector of the economy?

Answer. While the FCC licenses spectrum for use during space launches, other agencies such as the FAA and NASA have primary responsibility for most issues regarding space launches. The FCC has no intention to duplicate the efforts of these other agencies. The spectrum that is typically used for telemetry, tracking, and command during U.S. space launches is allocated for use by Federal agencies. Consequently, in those situations involving commercial use of spectrum where the FCC has a statutory responsibility regarding spectrum use by non-Federal government entities, the Commission works closely with NTIA to avoid the potential for harmful interference. The FCC will continue to work with the NTIA and other Federal agencies to ensure that this process is efficiently administered as possible.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO DR. JOSHUA D. WRIGHT

Economic Theory and Consumer Protection

Question 1. Dr. Wright, as an economist and law professor, you have published papers on numerous topics related to the FTC. In these writings, you demonstrate a clear worldview that government should intervene to protect consumers infrequently, and only after conducting stringent cost-benefit analyses. And on balance, you seemingly err against consumer protections on the belief that government actions tend to be more harmful to the public than letting some bad actors go unnoticed.

As you can see from the work I have done in this Committee, consumer protection is one of my absolute priorities. I regard the FTC as the most important consumer protection agency in the United States. I'm interested in hearing how the economic theories and cost-benefit analysis methods you subscribe to would impact your decision-making as a Commissioner.

Specifically, what do you see as the FTC's role in consumer protection? Would your economic views predispose you toward certain outcomes in consumer protection cases?

Answer. I believe the Commission is the world's preeminent consumer protection and competition agency. I hold both of the Commission's missions in the highest regard. I have written about the complexity in regulating high-tech markets—and the attendant caution required—the intellectual thrust of those concerns, usually raised in competition law cases, is that regulators should be wary of wrongly condemning pro-consumer behavior. These concerns are heightened when dealing with rapid innovations, as is common in high-tech markets. These concerns are not implicated, however, where the Commission is enforcing promises regarding privacy protections.

Historically, I think the Commission has done an outstanding job rigorously enforcing the consumer protection and competition laws passed by Congress. If confirmed, my top priority will be to uphold both the agency's consumer protection and competition law enforcement functions. The two areas are closely related and complementary in ensuring markets work efficiently. My views on consumer regulation

(and competition law as well) are grounded only on sound and broadly accepted economic theory and the rigorous analysis of empirical data. These are fundamental tools for pursuing the Commission's mandate to protect consumers and maximize consumer welfare. These are goals I take seriously, and, in my view, goals that are consistent with the application of sound microeconomic analysis.

Question 2. I am concerned that a number of the FTC's top consumer protection initiatives do not fit neatly within your economic models. For example, the FTC has made consumer privacy a priority—something that I have long supported—and yet it is extremely difficult to place a dollar figure on the value of an individual's privacy. How would you approach issues like privacy for which reliance on cost-benefit analyses may be inadequate?

Answer. I believe the insights of microeconomic theory can and do inform both the consumer protection and competition missions of the agency. Economic analysis helps guide the Commission's efforts even when a cost-benefit analysis is difficult—such as for privacy issues—because sound economic theory and analysis can suggest the correct inquiries for the Commission's focus and investigation. Of course, vigorous enforcement in the privacy arena is appropriate even without such an analysis when a practice implicates the Commission's deception authority.

Question 3. Would you insist that cost-benefit analyses always be performed in order for you to support a Commission initiative? What if there were insufficient data?

Answer. As discussed above, a cost-benefit analysis is not always required in order to support a Commission initiative. For example, vigorous enforcement under the FTC's deception authority does not require such an analysis. Similarly, in the antitrust arena, certain conduct well-known to reduce consumer welfare is appropriately addressed under a rule of *per se* illegality—in other words, the conduct is appropriately condemned without a detailed analysis of its costs and benefits. If confirmed, I can assure you that I will strive to enforce existing law in all cases in furtherance of the Commission's mission based upon the best evidence available.

Consumer Financial Protection

Question 4. Dr. Wright, during these difficult economic times, I have become increasingly concerned about scams and frauds that target struggling families. The FTC has been focusing on this area, issuing new rules prohibiting certain debt settlement and mortgage foreclosure rescue scams and conducting numerous enforcement actions. You have expressed skepticism about government intervention in markets, and about the need for consumer financial protections.

Do you agree with any of the consumer financial protection actions that the FTC has taken in recent years? Do you believe the Commission should have done more to protect consumers from bad mortgages with misleading terms—bad mortgages that ultimately led to the collapse of global financial markets?

Answer. Protecting consumers from unfair and deceptive business practices is central to the Commission's consumer protection mission. I strongly support the Commission's efforts in these areas, and, if confirmed, look forward to working with the agency to continue its proud tradition of increasing market transparency and combating unfair or deceptive business practices. As a broad example in the consumer protection context, I strongly support the FTC's fraud program. I fully support many of the FTC's recent consumer protection enforcement actions, including the FTC's recent consent order against an egregious invasion of consumer privacy, where rent-to-own companies and a software design firm pre-installed software onto consumer computers to track purchasers' locations and take pictures inside consumers' homes. This case provides an excellent example of the Commission's application of both the deception and unfairness prongs of its consumer protection authority.

Turning to the Commission's work regarding mortgage servicing, debt relief, and related areas, I fully support the Commission's efforts to curb deceptive marketing and lending practices and the Commission's enforcement actions in these areas. The FTC should fully employ its enforcement authority to challenge practices that exploit consumers' vulnerabilities in the mortgage lending arena, as in other markets.

Question 5. If confirmed, where would you want the Commission to focus its efforts in protecting American consumers from these types of scams and frauds?

Answer. If confirmed, as discussed above, I believe the Commission's efforts in combating deceptive practices in areas such as mortgage servicing, debt relief, and other forms of financial fraud are a critical area of the Commission's consumer protection mission. The Commission should continue to vigorously combat these and other unfair and deceptive business practices, including deceptive and online marketing practices, for the benefit of all consumers.

Privacy

Question 6. Privacy is a critical component of the FTC's consumer protection mission, and it has been one of my top priorities for the agency. Given this, I am interested in learning more about how you believe the Commission should approach consumer privacy issues.

In your testimony, you talk about the challenges the Commission faces in implementing its consumer protection efforts in high-tech environments. Yet a number of the FTC's privacy and data security cases involve the very high-tech industry that you believe warrant limited regulation and oversight. What types of privacy cases should the Commission focus on, and why? Are there privacy actions the Commission has brought with which you disagree? Would you support privacy cases like those against Google and Facebook that involve the high-tech industry? Why or why not?

Answer. The Commission often attacks deceptive practices designed to evade consumers' legitimate expectations based upon promises firms made regarding privacy. The Commission should remain vigilant in enforcing businesses' promises to consumers, such as those made by Google and Facebook. I have written about the complexity in regulating high-tech markets—and the attendant caution required—the intellectual thrust of those concerns, usually raised in competition law cases, is that regulators should be wary of wrongly condemning pro-consumer behavior. These concerns are heightened when dealing with rapid innovations, as is common in high-tech markets. These concerns are not implicated, however, where the Commission is enforcing promises regarding privacy protections. I support the principles of notice and choice embodied in proposed general privacy legislation because they help facilitate competition and benefits for consumers; I do not, however, have any particular recommendations or views on specific legislation at this time without further study. If confirmed, I would look forward to working with the Committee on these important issues.

Question 7. The FTC's privacy report recommends that companies implement privacy by design, offer increased transparency, and provide improved consumer choice. The report also calls on Congress to consider enacting general privacy legislation. What are your views on the FTC's report? Which recommendations would you support, and which recommendations would you disagree with? Why? Do you support general privacy legislation? Why or why not?

Answer. I support the general thrust of the FTC's privacy report in its articulation of the principles of transparency and consumer choice. These principles, in my view, provide a useful general framework for thinking about privacy regulation in manner consistent with serving consumer welfare. I have considered some of the report's recommendations, though not all. For example, I support both the Commission's general recommendation for privacy legislation as well as additional authority in the area of data security. I do not have particular recommendations to offer at this time about legislation in those areas. If confirmed, I will confer with both my colleagues and staff at the Commission as well as the Committee as I further develop views in these areas based upon my experiences and learning at the Commission.

Question 8. Where do you believe the Commission should focus its consumer protection resources in the area of privacy? Are there areas where you believe the Commission should limit its role? Which ones, and why?

Answer. In many privacy cases, the Commission is using its deception authority to enforce promises that a private company has made to consumers. The Commission should remain vigilant in enforcing these promises and preventing deceptive acts that harm consumers. While I have written that agencies should be cautious in regulating high-tech markets, the intellectual thrust of those concerns—most often raised in the competition context—is that one should be wary of wrongly condemning pro-consumer behavior that is difficult to understand in the high-tech markets. This concern is not implicated when the FTC acts to enforce promises made regarding consumer privacy protections.

For example, I support the FTC's recent enforcement action against DesignerWare under both its deception and unfairness authority. In that case, DesignerWare provided software designed to help rent-to-own-stores disable a computer if it was stolen or if the renter failed to make payments on it. The software also had a "Detective Mode" which enabled the rent-to-own stores to access private and confidential details about users, passwords, and user names for e-mail accounts and financial institutions, social security numbers, and medical records. That software also could log keystrokes, capture screen shots, and even take photographs of unsuspecting users with the computer's webcam. The Commission's complaint against both DesignerWare and the rent-to-own stores included both unfairness and deception

counts. This sort of behavior clearly harms consumers, intrudes egregiously upon consumer privacy, was reachable under existing law, and the Commission appropriately furthered its mission of protecting consumers in this case involving online privacy protections.

Where consumer harm is not apparent, I believe the Commission should take a more cautious approach before acting. That caution does not apply when there is clear harm—for example, when firms break promises to consumers regarding privacy protections or when firms engage in behavior that clearly harms consumers without countervailing benefits where consumers cannot avoid those harms.

Question 9. During your testimony in front of the Committee, you emphasized "consumer harm" as a metric for FTC action. Do you believe that protecting consumer privacy, in and of itself, constitutes protecting a consumer from harm? Or do you believe that consumers should only be protected from the physical, financial or otherwise tangible harms that stem from the misuse of personal information?

Answer. Cases involving intrusions on consumer privacy typically involve broken promises to provide some level of privacy protection. The Commission typically responds by invoking its deception authority to enforce these promises. In these cases, the harm is obvious and the promise should be enforced regardless of the level of protection promised. In these cases, the harm to consumers through the invasion of privacy is actionable itself, without any further harm. Under the Commission's unfairness authority, where no promise has been made, Congress has directed the FTC in statute to consider a variety of factors, and the Commission in its 1984 unfairness statement identified physical, medical, and financial harms as those it would enforce. The Do Not Call Registry relied upon preventing intrusions into the home. If confirmed, I would fully enforce invasions of consumer privacy which violate this unfairness standard as enforced by the Commission.

"Do-Not-Track"

Question 10. Dr. Wright, both the FTC and I support an online consumer tool called a "Do-Not-Track" mechanism. This mechanism would allow consumers to conduct their affairs online without entities collecting and aggregating their personal information. For instance, a user who visits websites—to learn about sensitive matters such as a medical condition or personal finances, for example—would have a choice to do so without having online companies track him or her. Under a bill I have introduced, consumers, with the single click of a mouse, could tell online companies to not collect their information. The companies would be legally bound to honor this request, subject to exceptions. The FTC is tasked with promulgating implementing regulations and with enforcement.

Dr. Wright, do you agree with me that consumers should have the ability to tell companies not to track them and that companies should honor that request? More specifically, do you believe that a Do-Not-Track request from a consumer should prohibit the collection of information about him or her, subject to limited exceptions for the basic functionality of the service and for such things as security and fraud prevention?

Answer. Online privacy is a critical and rapidly growing consumer concern, which I take seriously, and will continue to take seriously if confirmed. I support Do Not Track as an appropriate balance between consumer privacy interests and the benefits of online advertising, and support the FTC's coordination with the W3C to develop and implement a consumer-friendly Do Not Track standard. Regardless, consumers should have a Do Not Track option that is easy to identify, understand, and use. I would, of course, also enforce any Do Not Track legislation or other consumer privacy standards Congress saw fit to pass to supplement these efforts.

Question 11. What is your opinion of the Do-Not-Track recommendation contained in the FTC's privacy report?

Answer. I support Do Not Track standards that emphasize consumer privacy and ease of consumer use. If confirmed, I would work to implement and enforce any agency-promulgated Do Not Track standards or agency agreements with the W3C to implement effective Do Not Track features to maintain consumer Internet privacy.

Question 12. At the World Wide Web Consortium, also known as the W3C, there is currently an industry effort to develop voluntary Do-Not-Track standards. And I have introduced a bill that would establish a legal framework for Do-Not-Track that would be enforced by the FTC. What role, if any, do you think the FTC should play in the W3C process?

Answer. I understand the FTC has been working closely with the W3C to develop an effective and consumer friendly Do Not Track standard, and that there is still work to be done in that regard. I support the FTC's actions involvement in this

arena. I understand there are various positions as to what the exact parameters of a Do Not Track standard should be, and how it should be implemented and enforced. Whatever the parameters may be, any final Do Not Track standard must be easy for consumers to find, understand, and use. If confirmed, I would look forward to working with the Committee on these issues to ensure that American consumers are confident in their online privacy.

Question 13. Earlier this year, in conjunction with the release of the White House's privacy report, the Digital Advertising Alliance (DAA) announced that it would honor Do-Not-Track requests from web browsers. The industry has articulated numerous exceptions to this pledge, based on its own self-regulatory initiative, including exceptions for "market research" and "product development". I believe these exceptions are so large that they render the DAA's Do-Not-Track pledge practically meaningless. Do you believe that these exceptions are too big?

Answer. While I support a Do Not Track mechanism, I do not at this time have any specific views as to these particular exemptions. If confirmed, I will discuss the status of the industry self-regulatory initiatives and possible concerns with them with the Commission staff, Commissioners, and this Committee.

Question 14. If industry fails to live up to its self-regulatory pledge or otherwise fails to agree to meaningful Do-Not-Track compliance standards, do you believe this failure to self-regulate only highlights the need for Federal legislation?

Answer. I concur that there is a point at which legislation will be appropriate if self-regulatory efforts fail to generate a Do Not Track standard.

Enforcement of Consumer Protection Rules

Question 15. At the hearing, in response to a question from Senator Cantwell regarding the FTC's Petroleum Market Manipulation Rule, you stated that, where there are violations of the rule, you would support enforcement. Is this true for all consumer protection rules issued by the FTC?

Answer. Yes. If confirmed, I will enforce existing law.

Question 16. Given your preference for allowing the market to operate on its own and your general inclination against regulation, do you disagree with any issuance of consumer protection rules that the FTC has developed in recent years? If so, please discuss. Would you commit to enforcing violations of these rules as diligently as you would any other rules issued by the Commission?

Answer. I have not studied all of the consumer protection rules that have been issued in recent years. I am not aware of any specific examples of consumer protection rules I disagree with at this time. As noted above, if confirmed, I commit to enforcing violations of all existing laws, including any such rules.

The FTC's Actions with Respect to Alcohol Sales

Question 17. Since the repeal of Prohibition, states have been the primary authority when it comes to regulating the distribution and sale of alcohol. States have enacted varied laws that presumably reflect the attitudes and beliefs of their citizens on alcohol sales, health, and safety.

Dr. Wright, the Office of Policy Planning has issued reports and other public documents regarding state regulation of alcohol sales. The FTC has a mission to promote competitive free markets, but alcohol is a drug susceptible to abuse (particularly by minors) and is distinct from consumer products or services. Does the FTC have an interest in using its resources to weigh in on state laws and regulations regarding alcohol sales and distribution? If so, why?

Answer. Where Federal or state regulators or legislators request the Commission's input on the competitive impact of a proposed legislation or regulation, the FTC plays an important role in cooperating with those entities and providing information based upon its expertise in these areas. Alcohol usage, especially by minors, raises substantial concerns, both state and federal; many of these can fall under the Commission's competition and consumer protection authorities under the FTC Act and Clayton Act. For example, I support the Commission's action against Phusion Products regarding the advertisement of its now widely banned Four Loko product. The Commission's decades-long involvement with alcohol sales, labeling, and advertising has given the Commission a special understanding of competition and consumer protection issues connected to alcohol. But as the FTC's staff has stated, and as I have acknowledged in my own academic writing, there are clearly other public interests at stake besides those traditionally at the heart of the Commission's mandate—consumer choice, low prices, and convenience.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BARBARA BOXER TO DR. JOSHUA D. WRIGHT

Question. Dr. Wright, at the hearing I questioned you on comments you made regarding creation of the Consumer Financial Protection Bureau (CFPB), specifically comments that the agenda envisioned for the CFPB was "problematic" and that its "existence is likely to do more harm than good for consumers."

When I questioned you regarding those comments, you said "I had written about the earlier version of the CFPA (Consumer Financial Protection Act) prior to what was ultimately passed with the CFPB (Consumer Financial Protection Bureau). . . . Those comments were never about the existing agency."

But your writings contradict your testimony. While it is true that you criticized the proposed CFPA in a 2009 academic paper, in September 2011, 14 months after the Dodd-Frank Wall Street Reform and Consumer Protection Act—the bill which created the CFPB—was signed into law, you wrote an article titled "My Reflections on the Senate CFPB Hearing." In this article you said "the CFPB's intellectual blueprint suggests a more aggressive and dangerous agenda." Why does your testimony in response to my questioning contradict your writings?

Answer. The concerns I expressed in predicting what the CFPA or CFPB might do were based upon several academic writings explicating its intellectual foundations but have not come to pass. The blog post referring to the CFPB took place before the CFPB had the opportunity to engage in a substantial amount of activity. I believe both writings make clear that my concern was with the intellectual underpinnings of the CFPA, and in particular, certain applications of the behavioral economics literature to consumer protection regulation. I was concerned that some of the principles in the literature underlying the CFPA could harm consumers. For example, in the article you cite, I noted the possible dangers of the CFPB relying upon behavioral economic insights then-formulated by several academic articles into rules such as the proposed "plain vanilla" mandates, among others. Standard economic analysis, as I discussed in my 2009 academic article, suggested misapplication of these behavioral insights could ultimately harm the most vulnerable consumers by reducing the availability of popular and beneficial products to these potential borrowers. My view that consumer protection rules should serve the best interests of consumers remains unchanged. Further, I recognize that my comments in both the article and blog post came before the CFPB had the opportunity to engage in much activity. These were predictions. There is certainly substantial work for both the FTC and the CFPB to do in protecting consumers, and I am pleased to see that my concerns as articulated both in the post you cite as well as with Professor Evans have not come to pass. My criticisms about what the agency might do, based upon influential academic writings, have not come to fruition. At the hearing, I tried to articulate that those concerns did not apply to the work of the now-operating CFPB. If confirmed, I will fully cooperate with the CFPB and will enforce existing laws and regulations fully to protect all consumers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO DR. JOSHUA D. WRIGHT

Question 1. As a former state legislator and insurance commissioner, I am a firm believer in our system of federalism. Alcohol regulation, in particular, is an area historically reserved to the states under a three-tiered system of regulation.

You have written extensively as an academic about the antitrust implications of alcohol regulation.

As an FTC commissioner, what would be your view on the proper role of the Commission in the regulation and marketing of alcohol? And as an FTC commissioner, do you anticipate pushing for policies that contemplate a larger role for the FTC in promoting direct shipment of wine or alcohol?

Answer. States have broad authority to regulate alcohol. The Commission has developed expertise regarding the advertising and marketing of alcohol, which implicate the Commission's consumer protection and competition missions. I support the Commission's efforts to curb deceptive advertising, to examine and regulate potentially anticompetitive mergers, to promote consumer education regarding alcohol (and the effects of underage drinking), to provide views to other Federal agencies on alcohol labeling issues, to provide views to state legislators on request concerning the competitive effects of proposed regulation, and to produce economic studies of the industry. I support continuing the Commission's mission in these areas. I do not anticipate advocating a broader role for the agency in these areas, if confirmed.

Question 2. What express provisions of Federal or constitutional law give the Federal Trade Commission authority over alcohol or to promulgate policies affecting the sale or marketing of alcohol?

Answer. The FTC Act and the Clayton Act empower the Commission to review alcohol industry mergers. The FTC Act further empowers the Commission to challenge anticompetitive practices within the alcohol industry, as well as to challenge unfair or deceptive practices involving alcohol marketing and advertising. Finally, Section 6 of the FTC Act permits the FTC to conduct studies and issue reports.

Question 3. In light of your work as a lawyer representing a client in the *Wine Country Gift Basket* litigation, will you recuse yourself from any related issues that come before the FTC, if confirmed?

Answer. If confirmed, I will comply with the letter and spirit of all ethical obligations involving conflicts. These rules are in place to ensure confidence in the Commission's decisions and I take those commitments very seriously. I have disclosed all financial relationships with the Commission and the Committee, including financial support received from the Family Winemakers of California in the amicus brief referenced. President Obama's Ethics Pledge extends the general obligation set forth under the Standards of Conduct not to participate in any particular matter involving specific parties in which the firm is a party to two years following appointment to the Commission. In all future matters potentially giving rise to conflicts, I will seek the advice and counsel of the Federal Trade Commission's ethics officials in order to determine how to fully comply with the letter and spirit of the law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO DR. JOSHUA D. WRIGHT

Recusal From Current Enforcement Actions at the FTC

Question 1. Professor Wright, it is possible that it may take the FTC more than two years to make decisions on enforcement actions on issues resulting from its current investigation of Google. You have already expressed your views on the investigation in your writing and public appearances. It makes it difficult, then, not to conclude that you have in some measure already prejudged the outcome of the investigation, regardless of how long it would take the Commission to complete its investigation. Will you recuse yourself from all current FTC enforcement matters involving Google?

Answer. I take my ethical obligations very seriously. I have disclosed these financial relationships to the Committee and to the Commission, including its ethics officials. If confirmed, I pledge to recuse myself where recusal is required by existing law or President Obama's Ethics Pledge, which imposes additional obligations. Consistent with President Obama's Ethics Pledge, I will recuse myself from certain FTC matters, including law enforcement matters, involving Google for a period of two years.

Question 2. Are there any other companies or industries where you might have to recuse yourself on FTC enforcement actions based on your writings or based on who has provided financial support?

Answer. I have disclosed these financial relationships to the Committee and to the Commission, including its ethics officials. Those entities that provided financial support since I became a law professor in 2004 are:

Microsoft Corporation
Church & Dwight, Inc.
Internet Company for Assigned Names & Numbers
Google, Inc.
Express Scripts, Inc.
International Center for Law & Economics
Family Winemakers of California
Arlington Economics, Inc.
AT&T
American Tort Reform Association
American Beverage Association
Northwestern University
George Mason University
Computer & Communications Industry Association

Charles River Associates
Liberty Fund
Law and Economics Consulting Group
Cambridge University Press
Thomson West

Some of these entities directly or indirectly funded research, published work, or commentary prior to the reporting period of the Senate Questionnaire or Form OGE 278. For example, Microsoft Corporation is not included on those documents but is listed here because it indirectly funded research prior to those reporting periods. I have included entities that have provided direct or indirect financial support since 2004, out of an abundance of caution.

I take my ethical obligations at the Commission very seriously. Avoiding conflicts and appearance of impropriety is important to maintaining the credibility of the agency and the execution of its important mission of protecting consumers. President Obama's Ethics Pledge, among other requirements, extends the general obligation set forth under the Standards of Conduct not to participate in any particular matter involving specific parties in which the former employer or client is a party to two years following appointment to the Commission. It also prohibits meeting or communicating with one's former employer or client unless the meeting or communication is open to all interested parties. I will abide by those requirements and all other ethics laws. Further, in all future matters potentially giving rise to conflicts, I will seek the advice and counsel of the Federal Trade Commission's ethics officials in order to determine how to fully comply with the letter and spirit of applicable ethics laws.

FTC Petroleum Market Manipulation Regulations

Question 3. Dr. Wright, as you are aware, I am frustrated that the Federal Trade Commission (FTC) seems unwilling or unable to use the new authority and responsibility Congress gave them in 2007 (codified at 42 U.S.C. 17301–17305) which the FTC Rule defines as prohibiting "any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, from knowingly engaging in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person, or intentionally failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product." Your academic work seems to indicate that you may not support the FTC's Rule prohibiting petroleum market manipulation.

Can you state your views for the record on the FTC's Petroleum Market Manipulation Regulations and whether you believe they are accurate and appropriate interpretations of the underlying statutes?

Answer. Protecting American consumers in oil and gas markets is among the most important of the Commission's priorities, and the agency can and should vigilantly enforce its authority in this area where violations occur. The Market Manipulation Rule is an important tool that helps the FTC ensure American consumers are not harmed by manipulation of fuel prices. The statute prohibits "any manipulative or deceptive device or contrivance . . . in connection with the purchase of or sale of crude oil gasoline or petroleum" and the Market Manipulation Rule was designed to mirror SEC rule 10b–5. It also forbids any person from knowingly reporting false information about petroleum or fuel to the Federal Government with the intention of affecting government data or statistics.

I would like to emphasize that while I support enforcement of the Market Manipulation Rule when violations occur, I do not have any basis upon which to comment on the specific merits of any pending investigation. I am privy neither to the Commission's work in this area to date nor to the available evidence of any pending investigations. If confirmed, I will carefully analyze existing evidence and vigilantly enforce the Market Manipulation Rule when it is violated.

Question 4. As a Commissioner would you vote to strengthen or weaken these regulations? Please be specific.

Answer. If confirmed, I will enforce all existing law, including the Market Manipulation Rule, to its fullest extent. I understand Congress intended the Commission to have an authority analogous to the SEC's rule 10b–5 authority and that implemented by FERC. If confirmed, I will support enforcement of the rule in a manner consistent with Congress' intent.

Question 5. Do you agree with some at the FTC who consider themselves an enforcement agency and therefore should play little to no role in policing wholesale petroleum markets beyond waiting for market complaints and reviewing mergers?

Answer. I view the FTC's primary role as an enforcement agency, including all existing laws under its jurisdiction. This mission includes enforcing the Market Manipulation Rule as well as its traditional consumer protection and competition missions.

Question 6. Without a specific complaint, what anti-competitive activity do you believe would justify an FTC investigation and use of its market manipulation authority?

Answer. The statute prohibits "any manipulative or deceptive device or contrivance . . . in connection with the purchase of or sale of crude oil gasoline or petroleum" and was designed to mirror SEC rule 10b–5. It also forbids any person from knowingly reporting false information about petroleum or fuel to the Federal Government with the intention of affecting government data or statistics. Where there is reason to believe the rule is being violated I would support an FTC investigation to further develop facts. Where evidence suggests a violation of the rule I will support enforcement.

I would like to emphasize that while I support enforcement of the market manipulation rule when violations occur, it would be inappropriate for me to comment on the specific merits of any pending investigation. I am privy neither to the Commission's work in this area to date nor to the available evidence of any pending investigations. If confirmed, I will carefully analyze existing evidence and vigilantly enforce the Market Manipulation Rule when it is violated.

Question 7. In general, how would you as a Commissioner help ensure the FTC uses its anti-market manipulation authority in the way Congress intended—to investigate anomalous gasoline price spikes and assure that consumers are safe from market fraud, manipulation, or other anticompetitive behaviors?

Answer. I am committed to enforcing the Market Manipulation Rule where violations exist. If confirmed, I will work with the Commission and its staff to better understand the current status of any pending investigations and evidence to which I am not currently privy. Further, I will discuss the operation and enforcement of analogous authorities by FERC and the SEC to better understand how they are making use of the authority.

Question 8. Last week, the six Senators from the West Coast called for an investigation into this year's West Coast gas price spikes that occurred while crude oil prices were declining, inventories were increasing, and there is evidence of possible misleading market making information. Given these facts, would you support an FTC investigation into this matter as an FTC Commissioner?

Answer. I would want to fully evaluate the facts and existing evidence before making a determination about whether I would support an investigation, if confirmed. If facts uncovered indicated a reason to believe there is a violation of the Market Manipulation Rule, I will support enforcement.

Question 9. Do you believe that West Coast petroleum markets should be more transparent and less concentrated?

Do you agree that if pricing structures in these markets were opaque that the market is probably inefficient to the detriment of consumers?

Do you agree that if the West Coast wholesale oil market was highly concentrated it could be subject to market power abuse?

Answer. Highly concentrated markets can be subject to abuse of market power. Lack of transparency in pricing can also harm consumers. I have not conducted an independent analysis of West Coast petroleum markets and thus do not currently have a view as to whether those markets should be more transparent or less concentrated at this time. If confirmed, I will enforce the Commission's authority under the FTC Act to prevent acquisitions or conduct that harm consumers and violate the antitrust laws.

Question 10. In 2005, in the wake of Enron's role in the Western Electricity Crisis, Congress gave the Federal Energy Regulatory Commission (FERC) new responsibilities to prevent manipulation of electricity and natural gas markets. In response, FERC expanded its market oversight and investigation abilities, added dedicated staff, and expanded collection of essential market data. The results are striking; FERC has been able to root out a large number of cases of fraud and manipulation in the electricity and natural gas markets that probably would have gone undetected and cost consumers billions. To date FERC used its 2005 anti-manipulation authority to conduct 107 investigations resulting in 52 settlements and civil penalties of $294 million and disgorgement of ill-gotten profits totaling $155 million. Unfortunately, I have seen scant evidence of a similar effort at the FTC despite re-

ceiving parallel authorities and responsibilities in 2007 to police wholesale oil markets using the same "manipulative or deceptive device or contrivance" standard established by Section 10(b) of the Securities Exchange Act.

Dr. Wright, do you believe the FTC should be more like FERC in proactively policing wholesale oil markets?

Answer. I understand your concern that the FTC has not been as active as FERC in exercising a similar authority aimed at preventing market manipulation. As an outsider to the Commission, I am neither privy to FTC information and evidence concerning any pending investigation under the Market Manipulation Rule, nor to any information that might explain the disparity in enforcement records. If violations of the Market Manipulation Rule are occurring, I believe the Commission should fully enforce the rule in those instances. If confirmed, I will enforce the Commission's authority where there is evidence of violations. I will also consult with FERC officials to better understand their enforcement strategies and approaches.

Question 11. Would you support efforts to create the necessary enforcement ethos and staff expertise and resources at the FTC as now exists at FERC?

Answer. As an outsider to the Commission, I am neither privy to FTC information and evidence concerning any pending investigation under the Market Manipulation Rule, nor to any information that might explain the disparity in enforcement records. I would support additional steps to ensure the Commission does what is necessary to enforce the rule if there is evidence that violations are going unenforced. I will also consult with FERC officials to better understand their enforcement strategies and approaches.

Question 12. How do you believe the FTC should best monitor and collect non-public data from the wholesale petroleum markets in order to ensure it is able to monitor and detect any anticompetitive or illegal activity?

Answer. I do not have any specific views as to what data monitoring and collection efforts would be appropriate in order to enforce the Market Manipulation Rule or other law. I have not been privy to FTC information and evidence concerning any pending investigation nor have I had the opportunity to discuss the implications of additional monitoring and collecting non-public data with Commission staff. If confirmed, I will certainly do so and work with the Committee on these important issues.

Question 13. Congress provided the FTC with a clear standard for manipulation by relying on the large body of case law interpreting and applying section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b–5, do you agree the FTC should apply this law in accordance with analogous securities law precedents?

Answer. I understand Congress intended the Commission to have an authority analogous to the SEC's Rule 10b–5 authority. If confirmed, I will support enforcement of the rule in a manner consistent with Congress' intent. I have not specifically considered the issue of whether securities law precedents should be applied in the context of FTC application of the Market Manipulation Rule or considered what legal issues might be implicated by such reliance. If confirmed, I will discuss these issues with the Commission staff and Commissioners as well as the Committee.

Level of Market Concentration in West Coast Petroleum Markets

Question 14. Dr. Wright, I know you are an anti-trust scholar so I'm interested in hearing your views about the concentrated West Coast petroleum market. The West Coast is an isolated gasoline market with few pipelines connecting to other regions. The refineries within the West Coast are almost entirely what the West Coast must rely on for finished motor gasoline. In addition, within the West Coast, the largest 3 companies own 53 percent of refining capacity, the largest 4 own 67 percent, and the largest 5 own 79 percent.

Given these facts, are you concerned about a greater opportunity for the use of market power to anti-competitively influence prices?

In your opinion, and considering the above statistics, does the West Coast wholesale petroleum market represent a highly efficient market?

Answer. If confirmed, I will approach all potential investigations with a reliance on economic analysis and data, and will support vigorous enforcement to protect consumers where anticompetitive conduct takes place. As an antitrust scholar, I take the efficient operation of markets very seriously: markets are a primary engine of economic growth, and anticompetitive conduct threatens the gains from markets consumers regularly enjoy. Antitrust analysis has, however, evolved from relying exclusively upon market shares and structure to assess the competitive performance of markets to more direct analysis of competitive effects. Thus, market share statistics such as those above, while relevant data, are not sufficient to make any conclusions about the efficiency of any market without more. I am certainly open to the

possibility that the petroleum market represents a highly concentrated and inefficient market, but without rigorous investigation grounded in empirical data, I cannot express an educated opinion as to whether the petroleum market on the West Coast presents any particular competitive concerns.

Question 15. Given the current West Coast situation, do you think there is sufficient competition and lack of barriers of entry to prevent the use of market power?

Could a West Coast refiner or multiple refiners arbitrarily raising prices without losing sufficient sales to offset the increase in profits from the elevated prices?

In June 2009, the Government Accountability Office (GAO–09–659) found that less concentrated markets were statistically significantly associated with lower gasoline prices and recommended that the FTC undertake more regular retrospective review of the past petroleum industry mergers, do you agree with this recommendation?

Answer. I understand gasoline markets are remarkably important to consumers and competition issues in these markets deserve careful scrutiny. I have not conducted an independent analysis of the West Coast wholesale petroleum market or markets. I would need to conduct such an analysis to address the competitiveness of these markets, an appropriate understanding of barriers to entry, and potential for firms to exercise market power. I also have not reviewed in detail the aforementioned GAO study. I fully support FTC retrospective studies of petroleum mergers.

FTC's Mission

Question 16. Mr. Wright, your writings seem to stress the costs of FTC enforcing its statutory mission and argue that generally it would be better for the consumer if the FTC erred on the side of *less* enforcement and *missing* anticompetitive practices. I have also seen examples of your writings that indicate antipathy and sometimes hostility to toward FTC antitrust enforcement. Mr. Wright, can you state for the record that you will support the mission of the FTC and will not support efforts to weaken existing FTC rules?

Answer. I fully support the FTC's consumer protection and competition missions. I will vigorously enforce the law for the maximum benefit of consumers.

Question 17. Do you believe that FTC actions in the past have dampened innovation and competition in the marketplace?

Answer. I believe that regulation is appropriate when a problem generates substantial consumer welfare losses and when the regulation can avert those losses in a cost-effective manner. I have criticized prior enforcement matters—including some by the FTC—because I feared the Commission had not adequately taken into account the action's impact upon incentives to innovate. While I have expressed these views as an academic with respect to some specific cases, I believe the Commission has generally done an excellent job in carrying out both its consumer protection and competition missions. The Commission is the world's preeminent consumer protection and competition law agency, primarily because it has taken actions that deter consumer harm in a cost-effective manner, maximizing consumer welfare while minimizing the risk of dampening competition or innovation.

Question 18. Your writings also seem to emphasize your belief that the burden of proof should be placed on the consumer to show anticompetitive behavior, and not for the FTC to proactively investigate suspicious market activity. Can you please clarify your views on burden of proof?

Answer. I believe the Commission's competition law mission is to protect consumers from anticompetitive conduct that creates or maintains market power. The plaintiff—whether an antitrust agency, a rival firm, or class of consumers—ultimately bears the burden of persuasion in antitrust cases. The appropriate scope of that burden in competition cases is flexible under antitrust law. The critical inquiry is what rule will maximize consumer welfare. Some challenged practices have proven so likely to harm consumer welfare that they are properly regarded as *per se* illegal: no proof of harm is necessary to condemn the challenged practice. Still others are briefly examined to determine whether they may safely be determined as *per se* illegal or if they should be subjected to close empirical scrutiny of costs and benefits. Towards the other end of the spectrum of business practices, some arrangements between firms present the possibility of consumer harm, but typically indicate pro-consumer arrangements, leading to higher quality, greater product variety, and lower prices. In these cases, a strong showing of consumer harm through rigorous empirical data is due. The Commission should of course actively investigate all serious threats to consumer welfare, and, if confirmed, I will support the rigorous investigation of any business practice implicating competitive harm leading to consumer welfare losses.

Question 19. Do you believe the FTC should monitor and collect non-public data from the wholesale petroleum markets in order to ensure it is able to monitor and detect any anticompetitive or illegal activity?

Answer. I have not specifically considered and I do not have any specific views as to what data monitoring and collection efforts would be appropriate in order to enforce the Market Manipulation Rule or other laws in petroleum markets. I have not been privy to FTC information and evidence concerning any pending investigation nor have I had the opportunity to discuss the implications of additional authority to monitor and collect nonpublic data with Commission staff. If confirmed, I will certainly do so and work with the Committee on these important issues.

Consumer Financial Protection Bureau (CFPB)

Question 20. Dr. Wright, in response to questions posed by Senator Boxer during your December 4, 2012 confirmation hearing, you said that your statements calling the Consumer Financial Protection Bureau (CFPB) "aggressive and dangerous" were in reference to the Agency as earlier conceived and not the current CFPB. However, it seems you made the same statements in reference to the current CFPB on September 9, 2011. In a "Truth on the Market" blog post, you say that the CFPB could "could harm consumers and small businesses" and that ". . . the CFPB's intellectual blueprint suggests a more aggressive and dangerous agenda."

Now that the CFPB has promulgated rulemakings to flesh out its authorities and taken action to protect consumers in cases against credit card companies, do you still think that the CFPB is pursuing an "aggressive and dangerous agenda"?

Do you think that any of the CFPB's actions—including its rulemakings, investigations, and enforcement actions—have "harm[ed] consumers and small businesses," as you thought 15 months ago may happen?

Answer. My concerns, both as described in my paper with David Evans and in my comments on Truth on the Market, have always been about the potential for consumer harm growing out of an abuse of several insights from behavioral economics. The concerns I expressed about the potential actions of a Consumer Financial Protection Agency or a related Consumer Financial Protection Bureau have not come to pass. For example, as I commented in the Truth on the Market post you cite, hard-paternalism interventions such as mandatory "plain vanilla" products can reduce the availability of beneficial financial products, especially to the most vulnerable and least well-off consumers. I remain concerned about the potential misuse of behavioral insights to justify these interventions. This concern arises out of a fear that some of these regulatory proposals might ultimately harm rather than benefit consumers. Yet these concerns have not come to fruition in the CFPB's regulations to date, which have been largely sensible and much more circumspect than some of the initial proposals from the underlying legal scholarship grounding the original CFPA. There is substantial work for the CFPB to do in protecting consumers, and, if confirmed, I look forward to cooperating fully with the CFPB in the agencies' mutual mission of ensuring consumers are fully protected from deceptive, fraudulent, and unfair practices.

Question 21. To effectively enforce the FTC's consumer protection mission under the Sherman Act, Clayton Act, and the FTC Act, the FTC must extensively monitor many markets and collect large amounts of data. In turn, the CFPB, to effectively enforce its consumer protection mission as provided in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), must extensively monitor many markets and collect large amounts of data.

In order to multiply the effectiveness of the consumer welfare protection missions of both Agencies and to avoid duplication of effort and costs, do you support a cooperative agreement between the FTC and the CFPB? (Beyond the requirements for cooperation in collecting and tracking complaints as explicitly required by Sec. 1013(b)(3)) of the Dodd-Frank Act).

Specifically, do you support the sharing of all Agency collected market data as requested by either Agency and the sharing of data by either Agency during an investigation?

Answer. Both the CFPB and FTC share a common mission of protecting consumers. As your question suggests, one potential drawback to dual enforcement of a common mandate is redundant costs in compiling data on, investigating, and prosecuting similar conduct under differing standards. While I am not privy to either the Commission's or CFPB's ongoing investigations, I support both the current memorandum of understanding between the Commission and CFPB as well as broad information-sharing and cooperation between the two agencies pursuant to both agencies' consumer protection missions.

Pharmacy Benefit Managers (PBMs)

Question 22. Dr. Wright, in your writings you have generally supported Pharmacy Benefit Managers (PBMs) as they currently exist and opposed allowing pharmacies to collectively negotiate with PBMs. Do you maintain that position? Please explain the reasoning for your answer.

Answer. I want to reiterate that I have disclosed a financial relationship with Express Scripts, Incorporated to the Commission and the Committee arising from consulting work provided related to the impact of state regulation on health care costs and health outcomes. Pursuant to President Obama's Ethics Pledge, I will not participate in certain FTC matters, including law enforcement matters, involving Express Scripts before the FTC for two years.

I have testified concerning the risks of antitrust exemptions, including a proposed exemption involving independent pharmacies. I maintain that position. Competition agencies, the bipartisan Antitrust Modernization Commission, and antitrust scholars generally have long been skeptical of antitrust exemptions as a method of influencing bargaining outcomes between two private parties precisely because such exemptions put consumers at serious risk of anticompetitive conduct. If confirmed and confronted with a PBM business practice or merger that fell outside the aforementioned Ethics Pledge, I would analyze it carefully under existing law, employing rigorous empirical evidence, and with an eye toward its ultimate impact upon consumer welfare.

Question 23. The Affordable Care Act supports confidential reporting by PBMs (as described below) in the new health insurance exchanges (to the commissioners of the state exchanges and to the plans participating in the exchanges) and under Medicare Part D. While these new reporting would not require PBMs to change their business model or pass the savings on to their members, I would like to better understand your views on information disclosure given your writing.

Do you support disclosing information on the percent of all prescriptions that are provided through retail pharmacies compared to mail order pharmacies, generic dispensing and substitution rates in each location?

Do you support disclosing information on the aggregate amount and type of rebates, discounts and price concessions that the PBM negotiates on behalf of the plan and the aggregate amount of these that are passed through to the sponsor?

Do you support disclosing information on the average aggregate difference between the amount the plan pays the PBM and the amount that the PBM pays the retail and mail order pharmacy?

Answer. I have not had the opportunity to specifically consider the merits of confidential reporting by PBMs as described in your question pursuant to the Affordable Care Act. As a general matter, pricing transparency can and often is an important element of facilitating competition in some markets. However, mandating competitors to disclose pricing to rivals can also raise competitive risks. FTC staff have, with the approval of the Commission, raised these concerns in letters to state legislatures considering mandatory disclosure obligations involving PBMs and in other industries for those reasons. If confirmed, my views on this issue would be informed by Commission staff, Commissioners, and be guided by careful economic analysis and evaluation of evidence.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO DR. JOSHUA D. WRIGHT

Question. In a 2009 paper, you claimed there was no meaningful failure of mortgage consumer protection in the run-up to the financial crisis because borrowers understood the risks of subprime mortgages.

But, last year, a former Chase mortgage banker in Florida—whose team had originated more than $2 billion in mortgages in 2007—admitted that the bank had sought out less savvy borrowers and steered them into riskier and more expensive subprime loans in order to increase bank profits.

Similarly, a whistleblower from Wells Fargo—the largest residential home mortgage originator in the United States—who had been the bank's top-producing subprime loan officer admitted that she had steered consumers who had been eligible for prime loans into subprime mortgages. According to her affidavit, some loan officers falsified loan applications to steer customers into subprime mortgages. Others lied to customers about the terms of subprime loans, including the ability to prepay without penalty, in order to encourage them to apply for subprime loans.

Do you still believe that consumer protections in the mortgage market were adequate in the run-up to the financial crisis?

Answer. I have observed in my academic writing that "some consumers were victims of unfair and deceptive practices in securing mortgages" as well as "that the regulatory agencies could and should have done a better job of regulating that burgeoning subprime mortgage market." See David S. Evans & Joshua D. Wright, *The Effect of the Consumer Financial Protection Act of 2009 on Consumer Credit,* 22 Loy. Consumer L. Rev. 277, 309 n.80 (2010). I continue to believe that the appropriate agencies bear some responsibility for failing to appropriately regulate subprime mortgages. The overarching point behind my critique of the CFPA Act with Professor Evans, and related commentary discussing the potential activities of the CFPB, is not that regulation was inappropriate. It is that good regulation—both effective and cost-effective regulation—was appropriate: that not every additional regulation would solve the problems with poorly regulated subprime mortgage markets. And indeed, I believe well-crafted and considered regulations can improve consumer welfare, as I indicated there and elsewhere throughout my academic work. I believe the key inquiry is how to regulate correctly to maximize consumer welfare by preventing deceptive, unfair, and fraudulent practices while maintaining a robust and competitive market for consumer products. If confirmed, I will fully enforce existing laws and regulations and will support new cost-effective regulations which will facilitate these goals, consistent with the Commission's mission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO DR. JOSHUA D. WRIGHT

Question 1. In our meeting last month, you said you take an evidence-based approach and look only at empirical data and facts when making decisions. I was heartened to hear that. However, a review of your research and writings indicate that you have strong views about antitrust enforcement, state alcohol regulation, and online privacy, among others. How will you square your previous writings with your pledge to take an evidence-based approach if confirmed as an FTC Commissioner?

Answer. I reaffirm my commitment to look closely at empirical data when making decisions. My previous writings indicate my commitment to an evidence-based approach to consumer protection and competition law. The primacy of empirical evidence is central to my academic research and my approach to analyzing consumer protection and competition issues. Reliance upon economic theory guides my opinions and writings, especially where I express a strong view. If confirmed, I will rely upon available data to guide decisions about enforcing existing consumer protection and competition law in furtherance of consumer welfare.

Question 2. FTC Chairman Leibowitz has described the FTC as a "small agency with a big mission." I agree and would add to that a very important mission: to protect consumers from unfair, deceptive, and anti-competitive practices. Do you believe the government has a role to play in protecting consumers? If so, to what extent?

Answer. I certainly believe the government has a vital role to play in protecting consumers. Markets are powerful institutions for organizing economic activity, and competition within markets provides consumers vast and important benefits, most especially including economic growth. Yet well-functioning markets require regulations that promote transparency, prevent unfair and deceptive practices, and prohibit anticompetitive behavior. The Commission has a critical role: protecting consumers when market forces are ineffective by preventing fraud, deception, and anticompetitive practices.

Question 3. What is your view of state regulation, state unfair and deceptive acts, and the role of states, particularly state attorneys general, in enforcing Federal statutes that protect consumers?

Answer. I support the state attorneys generals' efforts to prevent, deter, and punish fraudulent, deceptive, unfair, and anticompetitive conduct, including enforcing Federal statutes where Congress intends. The Commission frequently cooperates with state attorneys general in advising states on consumer protection and other matters and routinely provides state enforcers with access to information obtained in investigations.

Question 4. I appreciate that you will follow the advice of the FTC General Counsel and honor the Obama Administration's ethics policies and will recuse yourself from FTC business where appropriate. However, I am concerned about the possibility that limiting your recusal may be insufficient. Please list the entities that have directly or indirectly funded any of your research, published work, or commentary.

Answer. Senator, I have disclosed all financial relationships within the relevant reporting period to the Commission and Committee. The entities that have directly or indirectly funded any research, published work, or commentary are since I became a law professor in 2004:

Microsoft Corporation
Google, Inc.
Express Scripts, Inc.
Internet Company for Assigned Names & Numbers
International Center for Law & Economics
Family Winemakers of California
Arlington Economics, Inc.
AT&T
American Tort Reform Association
American Beverage Association
Northwestern University
George Mason University
Cambridge University Press
Thomson West

Some of these entities directly or indirectly funded research, published work, or commentary prior to the reporting period of the Senate Questionnaire or Form OGE 278. For example, Microsoft Corporation is not included on those documents but is listed here because it indirectly funded research prior to those reporting periods. I have included entities that have provided direct or indirect financial support since 2004, out of an abundance of caution.

Question 5. Will you pledge to recuse yourself from FTC business that involves any of those entities? If not, please explain why you do not believe it is necessary to do so.

Answer. I take my ethical obligations very seriously. I have disclosed these financial relationships to the Committee and to the Commission, including its ethics officials. If confirmed, I pledge to recuse myself where required by existing law or President Obama's Ethics Pledge, which imposes additional obligations. These rules seek to balance the importance of maintaining the credibility of the agency by avoiding conflicts with the desire to ensure the agency can execute its mission with the benefit of its full complement of appointed officials. President Obama's Ethics Pledge, among other requirements, extends the general obligation set forth under the Standards of Conduct not to participate in any particular matter involving specific parties in which the former client or employer is a party to two years following appointment to the Commission. It also prohibits meeting or communicating with one's former employer or client unless the meeting or communication is open to all interested parties. I will abide by those requirements. Further, in all future matters potentially giving rise to conflicts, I will seek the advice and counsel of the Federal Trade Commission's ethics officials in order to determine how to fully comply with the letter and spirit of all applicable ethics laws.

Question 6. Given that an entity's business before the FTC can last much longer than two years with the ongoing investigation, litigation, settlement negotiation, appeal, and potential violation cycle, please explain why you are limiting your recusal to Google for only two years?

Answer. I appreciate your concerns about ethics and recusal obligations at the Commission. The Commission's mission requires a keen eye towards not only maintaining the integrity of the agency, but also to avoiding the appearance of impropriety. The ethical obligations seek to balance the importance of maintaining the credibility of the agency by avoiding conflicts with the desire to ensure the agency can execute its mission with the benefit of its full complement of appointed officials. President Obama's Ethics Pledge, among other requirements, balances those competing interests by extending the general obligation set forth under the Standards of Conduct not to participate in any particular matter involving specific parties in which the former client or employer is a party to two years following appointment to the Commission. It also prohibits meeting or communicating with one's former employer or client unless the meeting or communication is open to all interested parties. If confirmed, I will fully comply with President Obama's Ethics Pledge and all applicable ethics laws.

Question 7. You are a prolific author and commenter. This committee has witnessed the negative effect that a commissioner's social networking and blogging ac-

tivities can have on an agency's ability to execute its mission. Will you continue to engage in blogging and social networking in your capacity as a commissioner, if confirmed?

Answer. I understand your concern that blogging and social networking can hinder the agency's mission. I will not blog or use social media in manner that would undermine the Commission's mission. Conversely, these tools can be useful in educating consumers that might not otherwise be reached about the Commission's important work. While I have not made any decisions about whether I will blog or use social networking in my capacity as a Commissioner if confirmed, I can assure you that if I do so, it will be in a professional and responsible manner aimed at furthering the mission of the agency.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO DR. JOSHUA D. WRIGHT

Deceptive advertising that could endanger children's health

Question 1. Dr. Wright, we hear a lot these days about parents' concerns about sports concussion. Concussions used to just be dismissed as "dings or "bell ringers." We now recognize concussions as a form of traumatic brain injury, and we know that multiple concussions or blows to the head can lead to lasting brain damage.

So it is natural that young athletes, coaches, and parents are looking for ways to play sports more safely. Unfortunately, some companies appear to be taking advantage of these safety concerns by using deceptive concussion prevention claims to sell children's sports equipment.

In January 2011, I wrote Chairman Jon Leibowitz to ask the Federal Trade Commission to consider investigating potential violations of the FTC Act related to selling and reconditioning football helmets. In October 2011, this committee held a hearing that examined "anti-concussion" and "concussion reduction" claims in marketing for soccer headbands, helmets, mouth guards, and even dietary supplements for children's use.

This month, the Commission finalized an order settling charges that a mouthguard marketer made deceptive claims that their mouthguards reduce the risk of concussions. According to a news release, the Commission sent warning letters to 18 other sports equipment manufacturers that may be making allegedly deceptive claims that their mouthguards, headbands, or other devices can reduce the risk of concussions.

I know you cannot comment on what the Commission may, or may not, be doing in regards to my request for an investigation.

However, I would like to ask if you share my view that, in general, issues involving serious children's health concerns should be a high priority for the FTC when it considers potential enforcement actions?

Answer. I share your views that FTC should vigilantly pursue its consumer protection mission when serious children's health concerns are at issue. The Commission's mission of protecting consumers is always important. But it is even more critical when it implicates the health and safety of vulnerable consumers, such as children. The Commission absolutely should vigorously pursue marketing and advertising practices which unfairly, fraudulently, or deceptively harm consumers, especially where these practices impact vulnerable consumers, including children.

FTC authority to impose civil penalties in cases where children's health is endangered

Question 2. Dr. Wright, at a hearing last year this committee examined some of the sports concussion claims used to market children's sports equipment and even dietary supplements. One of the medical experts at the hearing, Dr. Jeffry Kutcher of the University of Michigan, told the Committee that:

> The potential harm that I see being caused by products that claim to prevent concussion, when they do not, is far more than simply the financial harm of paying more for something that isn't likely to work as claimed.

Youth athletes who have already suffered a concussion—as well as their coaches and parents-could be especially susceptible to false claims that a product prevents head injuries. Children could end up putting themselves at greater risk of multiple concussions and lifelong brain damage if they return to play too soon, or if they falsely believe in a product's claim of concussion prevention.

I introduced legislation that would allow the Federal Trade Commission to impose civil penalties when companies uses false injury prevention claims to sell children's sports equipment.

For limited cases such as these, do you agree that if the Commission had civil penalty authority for violations of Section 5 of the FTC Act, it could help deter would-be violators from endangering children's health?

Answer. The Commission is, in general, properly empowered to prevent deceptive business practices. The Commission's obligation to consumers is at its apex in combating unfair or deceptive practices imperiling the health and safety of the most vulnerable consumers, such as children. I support the vigorous and consistent use of this authority to prevent consumer harm, especially when products threaten the lives of vulnerable consumers. I am willing to support additional authority when existing authority is not sufficient to effectively prevent or deter deceptive business practices that harm consumers. While I have not developed an opinion on the implications of a Commission civil penalty authority in this specific context, if confirmed, I would look forward to working with your office and this Committee on how to best deter unfair or deceptive conduct that harms children, including through civil penalties like those you describe.

Working with state attorneys general

Question 3. Many American families are suffering in today's economy. Unfortunately, people who are seeking work, struggling to make mortgage payments, or trying to get by on a fixed income can sometimes be more vulnerable to scams. That means you may have a lot of work to do during your time as Commissioner.

How could the Federal Trade Commission leverage its resources to better protect consumers?

Are there ways to work more closely with state attorneys general and U.S. attorneys to pursue those who are deceiving consumers and committing fraud?

Answer. As you mentioned, the Commission faces an enormous—and enormously important—mission: protecting consumers across the economy from unfair methods of competition and unfair or deceptive business practices. It is a relatively small agency with a large mission. Identifying methods to best leverage the agency's scarce resources to further its mission is an important priority. Cooperating with state attorneys general and Federal agencies, such as the CFPB, through information-sharing and otherwise is one method by which the Commission can leverage its resources. If confirmed, I will work to ensure the Commission works to prevent as much consumer harm as possible in these tough economic times.

FTC role in alcohol regulation

Question 4. New Mexico is a leader in the fight against drunk driving and has significantly reduced alcohol-related traffic fatalities through a combination of education, enforcement, and policy efforts. In fact, my state has some of the strictest alcohol and drunk driving laws in the country.

So I appreciate the Federal Trade Commission's efforts to help ensure that alcohol advertising does not target youths and that industry self regulatory practices are working. However, as a former state attorney general, I would be concerned if FTC actions related to alcohol beverage sales hampered a state's ability to protect public safety with stricter rules, for example, to combat drunk driving.

Could you share your thoughts on the FTC's proper role in the areas of alcohol control and assisting states in their efforts to prevent underage drinking and drunk driving?

Answer. Alcohol usage, especially by minors, raises substantial concerns, both state and federal; many of these can fall under the Commission's competition and consumer protection authorities under the FTC Act and Clayton Act. For example, I support the Commission's action against Phusion Products regarding the advertisement of its Four Loko product. The Commission has also supported the "Don't Serve Teens" program to reduce underage drinking. I support these activities. The Commission's decades-long involvement with alcohol marketing and advertising has given the Commission a special understanding of competition and consumer protection issues connected to alcohol. But as the FTC's staff has stated, and as I have acknowledged in my own academic writing, there are clearly other public interests at stake than those traditionally at the heart of the Commission's mandate—consumer choice, low prices, and convenience. Where Federal or state regulators or legislators request the Commission's input on the competitive impact of a proposed legislation or regulation, the FTC plays an important role in cooperating with those entities and providing information based upon its expertise in these areas.

Online privacy

Question 5. Dr. Wright, you note in your written testimony that the Commission's consumer protection mission includes "continuing to help consumers protect their privacy without diminishing the benefits of competition and innovation."

Could you expand on your thoughts about how to better protect consumers' (and especially children's) online privacy while not hampering innovation that provide consumer and social benefits?

Answer. The FTC has traditionally sought to protect children's online privacy through the COPPA Rule, enforcement actions under Section 5 of the FTC Act, and consumer and business education and outreach efforts. I support continued vigilance in these efforts. I also support updating COPPA to reflect technological progress in the marketplace such as Internet access to smart phones and new methods of information collection. Expanding these protections is important. I understand the Commission is currently reviewing comments to the proposed rule. While I have not yet reviewed these comments and do not have any specific recommendations, I believe the Commission's goal in updating COPPA is and should be to appropriately and carefully update and expand these important rules in a manner that fully and vigorously protects children while avoiding the potential collateral consequence of deterring services that would improve children's online experiences.

Consumer Protection

Question 6. Dr. Wright, I share some of the concerns raised by my colleagues regarding your previously expressed views of consumer protection laws and especially, the Consumer Financial Protection Bureau (CFPB). During the hearing, in reply to questions from Senator Boxer, you stated that previous concerns about the CFPB were "never about the existing agency." Additionally, in some of your writings you cited very specific concerns, including the agency's design and narrow focus. Could you expand on what specific changes in the CFPB have assuaged your concerns?

Answer. My concerns regarding the CFPA and ultimately the CFPB have always been regarding the potential for consumer harm through an expansive misapplication of certain behavioral economics insights leading to serious and paternalistic prohibitions on useful consumer products. Fortunately, the CFPB as constituted has not triggered these concerns, instead pursuing sensible and necessary consumer protections. While I remain concerned about the potential for abuses of behavioral economics insights to lead to large-scale consumer harm, the Bureau has not pursued such an agenda, and, if confirmed, I look forward to cooperating fully with the CFPB in vigorously protecting consumers.

Question 7. How do you envision cooperation between the FTC and the CFPB growing in the future?

Answer. I expect that as the CFPB continues to promulgate rules, investigate markets, compile data, and prosecute offenders, it will gather a sophisticated body of research and institutional expertise similar to what the Commission has enjoyed for decades. I hope and believe the two agencies can mutually reinforce their shared goal of maximizing consumer welfare by effectively regulating markets to prohibit unfair, deceptive, fraudulent, and anticompetitive conduct. I anticipate the two agencies will bring this mutual expertise to bear in a variety of channels, such as, but not limited to, through informal inter-agency cooperation, providing reports and advice during proposed rulemakings, and by sharing relevant market data between agencies where appropriate. If confirmed, I look forward to cooperating fully with the CFPB in ensuring both agencies can protect consumers.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO DR. JOSHUA D. WRIGHT

Long Distance Call Completion Problems in Rural America

Question. Ms. Clyburn and Dr. Wright, yesterday, I along with several other Senators sent a letter to the FCC concerning the issue of call completion problems in rural America. We have heard from many constituents regarding the persistent problem of some long-distance telephone call not being completed to consumers in rural areas. I am concerned about public safety and worry that it's only a matter of time before this situation leads to tragedy when a rural customer is unable to complete an urgent call. This is an issue where the FCC and the FTC may have to collaborate on investigating the issue of any providers failing to properly complete calls to rural areas. What has the FCC and the FTC done in relation to this issue? Will each of you commit to working together in this area to examine all possible causes?

Answer. I am unaware of any investigations the FTC has undertaken involving provider failure to complete calls to rural areas; I understand this falls within the FCC's purview. If confirmed, however, I can assure you that, consistent with the limits on FTC jurisdiction, I will cooperate with Commissioner Clyburn and the FCC as appropriate to address consumer harm arising from failed calls to rural areas.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO DR. JOSHUA D. WRIGHT

Question 1. My constituents have expressed numerous concerns regarding the potential anticompetitive effects of the now-approved merger of PBMs Express Scripts and Medco as well as continued consolidation in the industry. They have told me that consolidation will harm patients by reducing choice, decrease access to pharmacy services and ultimately lead to higher prescription drug costs paid by plan sponsors and consumers. I am very concerned about patient well-being and quality pharmacy care for my constituents, as well as rising health-care costs. Under your leadership, how should the FTC evaluate and address these concerns as it reviews ongoing consolidation in this market? Would you be willing to review consummated mergers in this industry to assess their impact on plan sponsors and consumers?

Answer. I want to reiterate that I have disclosed a financial relationship with Express Scripts, Incorporated to the Commission and the Committee arising from consulting work provided related to the impact of state regulation on health care costs and health outcomes. Pursuant to President Obama's Ethics Pledge, I will not participate in certain FTC matters, including law enforcement matters, involving Express Scripts before the FTC for two years. It also prohibits meeting or communicating with one's former employer or client unless the meeting or communication is open to all interested parties. I will abide by these requirements and all applicable ethics laws.

If confirmed, were a merger or consummated merger falling outside President Obama's Ethics Pledge and assuming I may otherwise participate (I will consult with the FTC's ethics officials as appropriate) to come before the Commission, I would, pursuant to the Clayton Act, review it carefully to assess its impact upon competition and consumers under existing law.

Question 2. As you know, I come from a rural state with patients that have relied on small community pharmacies for a very long time. Independent pharmacies provide advice and improve health for their patients thereby reducing costs by keeping patients out of the hospital. You have testified against a narrow exemption from antitrust laws for small independent pharmacies that have been pressured with audits and low reimbursements from large pharmacy benefit managers. Now, we have a large PBM in Express Scripts-Medco, and industry consolidation continues. How would you address the market dominance a few PBMs exert with respect to contracting with pharmacy providers essential to their networks?

Answer. I want to reiterate that I have disclosed a financial relationship with Express Scripts, Incorporated to the Commission and the Committee arising from consulting work provided related to the impact of state regulation on health care costs and health outcomes. Pursuant to President Obama's Ethics Pledge, I will not participate in certain FTC matters, including law enforcement matters, involving Express Scripts before the FTC for two years. It also prohibits meeting or communicating with one's former employer or client unless the meeting or communication is open to all interested parties. I will abide by these requirements and all applicable ethics laws.

I have testified concerning the risks of antitrust exemptions, including a proposed exemption involving independent pharmacies. Competition agencies, the bipartisan Antitrust Modernization Commission, and antitrust scholars generally have long been skeptical of antitrust exemptions as a method of influencing bargaining outcomes between two private parties. If confirmed and confronted with a PBM business practice or merger that fell outside the aforementioned Ethics Pledge and assuming I may otherwise participate (I will consult with the FTC's ethics officials as appropriate), I would analyze it carefully under existing law, employing rigorous empirical evidence, and with an eye toward its ultimate impact upon consumer welfare.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO DR. JOSHUA D. WRIGHT

Question 1. Does it make sense to have multiple agencies enforce privacy obligations, or does it make more sense for one agency to have this authority?

Answer. Overlapping enforcement authority involves a variety of advantages and disadvantages, and privacy enforcement is no exception. While overlapping enforcement authority can lead to agency specialization in particular areas of privacy regulation, it can also potentially result in duplicative enforcement expenditures as well as conflicting regulations. I do not have any specific recommendations at this time

concerning the desirability of overlapping privacy enforcement without having the benefit of observing the FTC in action in this arena.

Question 2. Should there be one set of standards that applies to entities that may be collecting, using, and/or sharing the same information?

Answer. Data security is an important issue and I support the Commission's efforts in this area under existing law. I share your concerns with the costs of having different standards imposed on different parties. Doing so often creates artificial advantages for some firms and can have the unintended consequence of harming both competition and consumers. However, in the context of data security different standards for different industries can make sense. For example, there is no reason for a small business to need the same data protection as an international investment bank. Further, variation in state law as applied to data security can impose significant costs on companies who may need to comply with many different notification regimes. A carefully crafted standard can benefit businesses and consumers by simultaneously deterring data theft while avoiding undue costs. I thus support the Commission's call for additional data security legislation. If confirmed I would be pleased to work with you and the Commission on these issues.

Question 3. Does the FTC currently have enough authority to enforce failures to safeguard data?

Answer. I believe data security is extremely important and essential to continued consumer confidence in the Internet economy. The Commission has made excellent use of its existing authority in the area of data security. The FTC's best available tool for enforcing data security issues is its Section 5 authority. If companies make commitments to consumers to protect their data in certain ways, and subsequently fall short of their promises, these companies have deceived consumers and the FTC can bring enforcement actions based upon those promises. The FTC has also developed excellent business and consumer education business tools on data security. I support the FTC's call for data security legislation. If confirmed, I look forward to working with the Commission and the Committee on these important issues.

Question 4. Do you believe that elected representatives are exercising their authority correctly to control the distribution and sale of alcoholic beverages?

Answer. Alcohol usage poses many challenges for both states and the Federal government, including several which implicate the Commission's authority over competition and consumer protection issues. States also have a variety of other interests in regulating alcohol, including underage drinking, health, and safety. In prior work I have recognized that regulation of alcohol implicates "numerous policy concerns in addition to the consumer welfare effects at the heart of antitrust law." See, *e.g.,* Jonathan Klick & Joshua D. Wright, The Effects of Vertical Restraints on Output: Evidence from the Beer Industry (unpublished working paper, 2008, at p. 22). I do not have any specific views on precisely how states should achieve the balance of these many concerns. If confirmed as an FTC Commissioner, my primary concern will be to carry out the Commission's responsibilities in these markets, including vigorous policing of markets for anticompetitive practices, evidence-driven merger review, and monitoring marketing and advertisement for consumer protection issues. Further, the FTC's policy authority under Section 6 of the FTC Act enables it to provide views to other Federal agencies on labeling issues, to provide views to states that request analyze proposed legislation, to conduct economic studies, to report to Congress as requested, and to educate the public through public-private campaigns discouraging teenage alcohol consumption.

Question 5. Do you believe that the Federal Trade Commission has the authority to alter the current state alcohol distribution structure?

Answer. States are given broad authority to regulate alcohol distribution. The FTC has the limited authority under the FTC Act and the Clayton Act to review mergers and enjoin those that would substantially lessen competition. The FTC Act also gives the agency authority to challenge anticompetitive practices in the alcohol industry and to exercise consumer protection oversight over unfair or deceptive alcohol marketing and advertising practices. In addition, Section 6 of the FTC Act gives the FTC authority to conduct studies and issue reports. State officials often request the Commission's advice on the likely impact of a proposed state regulation on consumers or competition. The FTC routinely issues letters providing such advice with the approval of the Commission in order to aid state decision-making. These letters only offer advice, however, and the state official must make his or her own decision about what best serves the state's constituents' needs. I do not believe the FTC's authority extends to altering the entire current state alcohol distribution structure.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN BOOZMAN TO DR. JOSHUA D. WRIGHT

Question. I have some concerns with the lack of PBM transparency and its impact on patients, plan sponsors, and employers. Given continued consolidation and the growing negotiation leverage that PBMs command in the market, what role should transparency play to enhance consumer protections?

Answer. I want to reiterate that I have disclosed a financial relationship with Express Scripts, Incorporated to the Commission and the Committee arising from consulting work provided related to the impact of state regulation on health care costs and health outcomes. Pursuant to President Obama's Ethics Pledge, I will not participate in certain FTC matters, including law enforcement matters, involving Express Scripts before the FTC for two years. It also prohibits meeting or communicating with one's former employer or client unless the meeting or communication is open to all interested parties. I will abide by these requirements and all applicable ethics laws.

Pricing transparency can and often is an important element of facilitating competition in some markets. However, mandating competitors to disclose pricing to rivals can also raise competitive risks. The Commission's staff, with the approval of the Commission, has raised these concerns in letters to state legislatures considering mandatory disclosure obligations involving PBMs and in other industries.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO YVONNE BURKE

Vision for Amtrak *Cascades* and state-supported routes

Question 1. More than 845,000 people rode Washington state's state-sponsored intercity rail service Amtrak *Cascades* in Fiscal Year 2012. Concurrently, nearly $800 million of Federal high-speed rail funding is being invested by the Washington State Department of Transportation to improve reliability, increase capacity, and rehabilitate track along the 466-mile rail corridor between Eugene, Oregon, and Vancouver, British Columbia. These improvements will help make Amtrak *Cascades* more accessible and reliable for residents of the Pacific Northwest. *Cascades* service already has an annual economic impact of more than $130 million—as additional trips are added, this is expected to grow.

With much attention focused on plans to further develop high-speed rail in the *Northeast Corridor,* how can Amtrak ensure state-sponsored routes like *Cascades* aren't forgotten? Is additional authority needed by Amtrak to provide that support?

Answer. Amtrak will be faced with difficult challenges in the next year to balance the needs of the Northeast corridor with the growing needs of the western states. These challenges come at a time with less revenue and the unfortunate devastation from Superstorm Sandy. The commitment made by states such as Washington and my home State of California to state-sponsored routes, such as *Cascades,* is based upon Federal participation and revenue support. The presence of a Board Member from the West will assure there is a continuing reminder of the investment made by states and the need for Amtrak to consider the Nation's second largest passenger contingency.

Question 1a. What is your overarching vision for state-supported routes as a part of Amtrak's network? How can you best support that vision on the Board of Directors?

Answer. State-supported routes are an important part of the short routes in states that have a need for meeting suburban populations. The economy of many states depends on the availability of an alternative to the automobile for workers to move on a daily basis to areas of employment opportunity. These routes can in some cases jointly utilize track and routing terminals. State-supported routes are often the innovator in technology and meeting the convenience of passengers.

Question 1b. What is your overarching vision for long-haul routes as a part of Amtrak's network? How can you best support that vision on the Board of Directors?

Answer. The long-haul routes are part of the vital Amtrak network. There is a need for expansion and upgrade of some of these routes. In many instances there has been little if any expansion and extension of these routes. My vision would be to see these routes receive upgrades and have coordinated schedules with the shorter state routes to provide a full range of transportation options for passengers.

Passenger Rail Reliability

Question 2. Passenger rail reliability is not where it should be nationwide, especially with regards to long-haul routes like the *Empire Builder* and *Coast Starlight,*

which run through my state and are utilized by many Washington residents. As you know, frequent and reliable service is essential to building ridership while increasing ticket revenue. What specific actions would you recommend Amtrak undertake to improve:

1. Performance;
2. cost recovery; and
3. reliability?

Answer. Specific actions:

1. Performance: There are two areas of performance that I consider the most important—they are on time performance and safety. Obviously, there are other areas of comfort and conveniences such as Internet availability, adequate luggage room, and food that is meals, snacks and fast food. The courtesy of worker are also important. I think Amtrak employees do a good job when interacting with passengers.
2. Cost recovery: This year Amtrak did a good job with fare box recovery, but realizes increased fares often do not translate into increased utilization of short and longer routes. I would make every effort to avoid an increase in fares and look at other ways of increasing revenue. In California, we have struggled with the benefit of greater use of advertisement on trains.
3. Reliability: On time performance is, in my mind, part of reliability. I realize there are sometimes accidents, weather problems or other incidents that delay trains, but emergency procedures that minimize these delays gives the passenger a greater assurance and confidence.

Passenger Experience

Question 3. What would you recommend to improve passenger satisfaction on Amtrak?

Answer. Dependability and comfort are probably what I consider highest on the list. Obviously, the modernization of cars and seats and good maintenance makes a lot of difference as well. Most of the people I talk to on short lines enjoy the camaraderie they experience as regular passengers.

Cost Control

Question 4. With the passage of Section 209 in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), which shifts a greater burden of cost to states for intercity passenger rail, states want to ensure that Amtrak is controlling expenses—something I think we are all very supportive of. Where would you recommend Amtrak cut cost to reduce the burden on states that sponsor passenger rail?

Answer. I would like to thank Carl Seip your Legislative Assistant for agreeing to meet with me in your office a couple of months ago and sharing with me some of the inequities experienced with Amtrak billing and reimbursement. It is indeed important that costs be reasonable and justifiable. There is an expectation that Amtrak make every effort to reduce cost where possible without negatively impacting operations and safety.

States as Customers

Question 5. With the state-sponsored intercity rail continuing to grow, and with states paying more under PRIIA Section 209, states are more and more viewing themselves as customers of Amtrak. Do you agree with this view? Do you think that Amtrak approaches states with that attitude? What policies would you recommend that Amtrak adopt to better reflect this cooperative partnership where states carry a larger portion of intercity rail cost?

Answer. State sponsored intercity rail makes us partners with Amtrak and in a sense we are customers because we utilize track, often routing terminals and stations with Amtrak. We pay for all of these services. I say "we" because I served for 16 years on a local Metro Board and presently serve on the California Transportation Commission that funds construction and operation of short and long lines. We try to meet once a year jointly with the Washington Commission and Oregon Commissions. Frankly, there have been some difficulties experienced by our local operators but there seems to be a changing approach to local and state partners.

I believe Amtrak should conduct regular meeting with state partners to work out in an amicable manner on the issues of cost and schedule. States are making large investments in new cars and Positive Train Control (PTC) for greater safety. There must be some recognition of these expenditures. I am not sure how these goals could be translated into policy, but, if confirmed, I would be supportive of efforts to move into development of policies that reflect these needs.

Amtrak Board Composition

Question 6. Considering the increasingly close partnership between states and Amtrak, do you think it would be appropriate to have a state representative on the Amtrak Board of Directors?

Answer. A state representative on the Amtrak Board would make a positive contribution. This could very well be a rotating ad hoc member. State supported services play an important role in Amtrak's network and having that perspective appropriately represented in Board activities is a fair position. There are a variety of ways that could happen—through choice of Board members or other means of participation. I would be open to working with you to determine what is most appropriate.

PRIIA Challenges

Question 7. What do you think the top challenges have been for Amtrak in implementing the Passenger Rail Investment and Improvement Act of 2008? How will you help Amtrak meet those challenges as a Board member?

Answer. With PRIIA placing all Amtrak service that is less than 750 miles in length under the funding responsibilities of the state, questions have been raised that must be resolved, such as additional cost for operation of lines that traditionally have been funded primarily by Amtrak. In some cases, assumption of these costs is almost double what has previously been the state subsidy. In addition, inventory disposition, such as rolling stock, station and maintenance facilities, as well as track usage, are issues that must be resolved.

If confirmed, I would try to utilize my experience in any way that I could to assist as a member of the Amtrak Board in carrying out the mandate of Passenger Rail Investment and Improvement Act of 2008 in the most effective and fair manner.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO CHRIS BEALL

Vision for Amtrak *Cascades* and state-supported routes

Question 1. More than 845,000 people rode Washington State's state-sponsored intercity rail service Amtrak *Cascades* in Fiscal Year 2012. Concurrently, nearly $800 million of Federal high-speed rail funding is being invested by the Washington State Department of Transportation to improve reliability, increase capacity, and rehabilitate track along the 466-mile rail corridor between Eugene, Oregon, and Vancouver, British Columbia. These improvements will help make Amtrak *Cascades* more accessible and reliable for residents of the Pacific Northwest. *Cascades* service already has an annual economic impact of more than $130 million—as additional trips are added, this is expected to grow.

With much attention focused on plans to further develop high-speed rail in the *Northeast Corridor,* how can Amtrak ensure state-sponsored routes like *Cascades* aren't forgotten? Is additional authority needed by Amtrak to provide that support?

Answer. It is clear from the PRIIA mandate, and from the conversations I have had with all of the Amtrak constituencies, including Congressional sponsors, the Amtrak Board of Directors and Amtrak management, that the state supported routes are an important part of the Amtrak network and of the overall U.S. transportation network. Amtrak must continue to focus on the ongoing management, maintenance and improvement of these routes, and as a member of the Board of Directors, if confirmed, it would be part of my responsibility to makes sure that routes like the *Cascades* routes, which are part of Amtrak's core mission, are not forgotten and that Amtrak maintains a balanced approach to each of the priorities outlined in its legislative mandate. This is especially important as Amtrak is a steward of state investments made into these systems and the states must believe and know that they are receiving appropriate value for their respective funds.

Based on my understanding of the existing legislation and mandate from Congress, it is within Amtrak's authority to provide support to the state supported routes. Any changes or expansions of this mandate should be addressed in the next iteration of the PRIIA legislation.

Question 1a. What is your overarching vision for state-supported routes as a part of Amtrak's network? How can you best support that vision on the Board of Directors?

Answer. I believe that Amtrak has several clearly outlined mandates as part of its congressional mandate, including working collaboratively with states to further the state supported routes. I believe that each of these routes are an important part of the overall transportation system in the U.S., that these routes should provide a high quality customer service experience for riders and that Amtrak, and the

states should work to continuously improve performance on key operating metrics including safety, on-time performance, and cost. If I am confirmed as one of the member of the Board of Directors, I will work collaboratively with other Directors and draw upon my experience overseeing large infrastructure businesses to help Amtrak establish priorities, policies, and systems that foster these goals and hold management accountable for achieving these goals over time.

Question 1b. What is your overarching vision for long-haul routes as a part of Amtrak's network? How can you best support that vision on the Board of Directors?

Answer. I believe that the long-haul routes are another clearly outlined mandate from Congress in the PRIIA legislation, and as such, Amtrak has a responsibility for the ongoing operation, promotion, maintenance and support of these routes. Similar to the state supported routes, I believe that these routes are also an important part of the overall transportation system in the U.S. and that the performance metrics for state supported routes, including a high quality customer service experience for riders, safety, on-time performance and cost are also appropriate goals that should be monitored by the Board of Directors. If I am confirmed as one of the member of the Board of Directors, I will work collaboratively with other Directors and draw upon my experience overseeing large infrastructure businesses to help Amtrak establish priorities, policies and systems that foster these goals and hold management accountable for achieving these goals over time.

Passenger Rail Reliability

Question 2. Passenger rail reliability is not where it should be nationwide, especially with regards to long-haul routes like the *Empire Builder* and *Coast Starlight,* which run through my state and are utilized by many Washington residents. As you know, frequent and reliable service is essential to building ridership while increasing ticket revenue.

What specific actions would you recommend Amtrak undertake to improve:

1. Performance;
2. cost recovery; and
3. reliability?

Answer. There are many things that a Board of Directors can best insure ongoing improvement in performance, cost recovery and reliability. First and foremost, the Board of Directors must establish key metrics in each of these areas and monitor the ongoing performance of the enterprise against these metrics. This requires effective accounting and information systems and the people to appropriately manage and monitor the systems. The Board of Directors should be rigorous but fair in the ongoing evaluation of both the people and systems. The Board of Directors must also recognize that most enterprises are staffed with competent knowledgeable individuals who are often constrained by systematic limitations. To the extent that a Board of Directors or individual Directors can help identify and remove systematic issues that affect performance, the overall enterprise can thrive and improve performance. If confirmed as a Director, I would approach my role as a change to identify and help break down these constraints to improve overall performance on each of the measures outlined in the question.

Passenger Experience

Question 3. What would you recommend to improve passenger satisfaction on Amtrak?

Answer. My personal experience is that I enjoy riding Amtrak most when it operates efficiently and on time. Additionally, having multiple departure times and alternatives provides additional flexibility and convenience, two factors I prize as a consumer.

I believe that ongoing, effective maintenance is an absolute key to improving availability and utilization of large infrastructure systems like Amtrak. Effective maintenance requires an investment in systems and people to identify and repair high risk components of the system including track, locomotives and cars and electrical systems. Additionally, maintenance requires an adequate and consistent capital expenditure program so that system components that fail frequently can be effectively replaced. I know that this has been a key focus for Amtrak over the past five years and believe that it should be on an ongoing focus in the future.

Cost Control

Question 4. With the passage of Section 209 in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), which shifts a greater burden of cost to states for intercity passenger rail, states want to ensure that Amtrak is controlling expenses—something I think we are all very supportive of. Where would you rec-

ommend Amtrak cut cost to reduce the burden on states that sponsor passenger rail?

Answer. As I mentioned earlier, cost is a key parameter that must be an ongoing focus and priority for Amtrak as it provides services to all of its customers. One area that I believe is an important and effective area for cost improvement is an improving safety record. Many times safety is regarded as a cost, and the focus is largely on the moral obligation to operate a safe workplace. While I believe strongly that any employer must maintain a safe workplace, I have found historically that improving safety performance can also significantly reduce workers compensation claims and insurance costs and that it can also be an effective strategy for cost reduction as well.

This is one of a number of cost savings ideas and experiences that I have obtained as a director of large infrastructure businesses, and I hope to find additional opportunities if I am confirmed and engaged as an active member of the Board of Directors.

States as Customers

Question 5. With the state-sponsored intercity rail continuing to grow, and with states paying more under PRIIA Section 209, states are more and more viewing themselves as customers of Amtrak. Do you agree with this view?

Answer. Yes, I believe that states that contribute funding to Amtrak on the state sponsored routes must be viewed as Amtrak's customer and that their goals must be incorporated into the ongoing management and oversight of Amtrak by the Board of Directors.

Question 5a. Do you think that Amtrak approaches states with that attitude?

Answer. Based on conversations with Amtrak management and Directors, I believe that Amtrak understands the need to work with the states on the state supported routes. If confirmed as a Director, I would view the ongoing focus and cooperation with the state supported routes as a key area of emphasis. The Board of Directors can be instrumental as a group in establishing this tone and creating policies and accountability measures that reinforce this customer service mindset.

Question 5b. What policies would you recommend that Amtrak adopt to better reflect this cooperative partnership where states carry a larger portion of intercity rail cost?

Answer. In any business with Amtrak's scope and scale, accurate and transparent reporting is a key first step toward understanding and fulfilling state goals regarding intercity rail. I believe Amtrak is committed as a policy matter to accurate and transparent reporting and I would work as a member of the Board of Directors to support and advance this goal. I believe that a policy of accurate and transparent reporting, when combined with a key understanding of the state's goals for intercity rail and accountability measures related to those goals, will produce the positive results that the state partners expect from these cooperative partnerships.

Amtrak Board Composition

Question 6. Considering the increasingly close partnership between states and Amtrak, do you think it would be appropriate to have a state representative on the Amtrak Board of Directors?

Answer. I believe that it is the responsibility of each individual member of the Amtrak Board of Directors to balance the competing Amtrak priorities and customer goals when establishing, implementing and monitoring policies and procedures, including the goals of Amtrak's state partners. While I believe that it is very important for Amtrak to have diverse viewpoints and opinions on the Board, I do not as a general rule believe that Directors should be nominated to represent specific interests. Instead, I believe they should be appointed to carefully consider and balance the requirements of all constituents served by Amtrak. However, if a state representative were nominated to the Amtrak Board of Directors, I would approach their nomination respectfully and would work collaboratively with them to advance the overall goals for Amtrak established by Amtrak under its legislative mandate.

PRIIA Challenges

Question 7. What do you think the top challenges have been for Amtrak in implementing the Passenger Rail Investment and Improvement Act of 2008?

Answer. Amtrak has faced a number of challenges implementing PRIIA. Addressing service levels and financial performance of its long-distance routes is a key factor that is difficult to address while maintaining customer service quality unless ridership is significantly increased. This was a critical directive of the PRIIA and Amtrak has established Performance Improvement Plans for the majority of these routes, but the execution of these plans and the ongoing monitoring and reporting

of performance under these plans will be critical to maintaining public confidence and increasing ridership, managing costs and improving service levels. There is no "silver bullet" in this regard and Amtrak and its Board of Directors must work at the operating level to think of new and creative solutions to address these issues.

Question 8. How will you help Amtrak meet those challenges as a Board member?

Answer. My background and experience making and overseeing infrastructure investment and experience as a Director of large organizations that provide essential infrastructure services to the U.S. economy is directly and uniquely relevant to the ongoing oversight of Amtrak as a Director. In total, I have over 14 years of experience constructing, operating, financing, managing and governing large-scale infrastructure projects and operating businesses. I have served as a Director of large organizations that provide infrastructure services. I currently serve as a Director of two such companies.

While many of Amtrak's goals and objectives are unique, many of Amtrak's challenges are shared by other large infrastructure businesses. I believe my background and experience will help me identify creative solutions to the problems Amtrak is experiencing and work collaboratively with Amtrak management to accomplish Amtrak's long term goals.

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