

Senator John Thune
Questions for the Record
Nomination of Mr. Thomas Wheeler to be
Chairman of the Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on June 18, 2013

1. During your testimony at the hearing, you stated that your blog posts about merger conditions were just “hypothetical musing[s].” Please answer yes or no—do you reject the type of non-transparent, “backdoor” policymaking via merger conditions discussed in your blog posts dated April 1, 2011 and September 2, 2011? If no, under what circumstances would you seek, if confirmed, to use merger conditions as a means to “backdoor” regulation of an entire industry?
 - A. As I stated at the hearing, I am committed to following statutory directives in reviewing mergers, which require that the transaction must be in the public interest, convenience, and necessity. The Commission’s merger review process is an open, transparent process in which the public is afforded an opportunity to comment on the merger. In the past, under Democratic and Republican chairs, the Commission has relied on the factual record developed in such transactions and imposed conditions so that a transaction that may otherwise not be in the public interest can be cured of that defect and allowed to move forward.**

2. During your testimony, you said to me that a transaction review must be “based upon the facts in that specific instance, based upon the mandate that the Congress has established in the Act, and based upon precedent.” If confirmed, can you assure the Committee that you will first look to Congressional mandates established in statute as your primary source of guidance and constraint, both with regards to transaction reviews and in general, before resorting to a reliance on Commission precedent?
 - A. Yes.**

3. The communications landscape has changed dramatically since Congress last significantly updated the Communications Act in 1996. Your experience gives you a unique perspective on the impact of these changes. If you could advise Congress on how to update the Act to better reflect technological and competitive changes since 1996, what would you suggest? In particular, are there any provisions of law that you believe to be inadequate or outdated?
 - A. If confirmed, I look forward to working with the Committee as it explores these issues. As I have mentioned, the technological transition that is occurring in the communications space should be the impetus for a review of the Commission’s rules to determine which ones should be retained, modified or eliminated to ensure that the Commission’s core mission of promoting competition, protecting consumers, providing universal service, and promoting public safety is continued. As a practical matter, policymakers should tackle this debate with a**

proper sense of humility, recognizing that technology will continuously evolve in a direction that we cannot possibly predict today. Thus, as we consider any potential reforms to the Act, a goal should be to provide an appropriate framework and tools for policy makers that best takes this reality into consideration.

4. The previous FCC Chairman inexplicably left the Title II reclassification docket open, despite telling a Congressional committee in 2012 that he was unaware of any FCC employees working on the order and that he would consider closing it. Congress has never intended for the Internet to be treated like wireline telephone service. In 2010, a bipartisan majority of over 300 Members of Congress expressed concern about the FCC's plan to reclassify the Internet as a Title II telecommunications service. Please answer yes or no—if confirmed, will you close the Title II reclassification docket? If no, please explain why you believe the Internet should be regulated like the public switched telephone network.

A. I am not in a position now to predict an outcome. If confirmed, I will meet with the General Counsel and others at the Commission to understand what, if any, internal activity is being devoted to this docket, and why.

5. During your confirmation hearing, you stated that, “[t]here is nothing worse for investment, innovation, job creation... than businesses not knowing what the rules are.” Do you believe the fact that the Title II reclassification docket remains open and actionable provides more or less certainty for communications providers?

A. As a venture capitalist that has funded Internet-based business opportunities, I can tell you from my personal experience, the status of this docket has been irrelevant to my decision making on those ventures.

6. Please answer yes or no—if you are confirmed and if the FCC's Open Internet order is struck down in the courts, will you come to Congress for more direction before attempting another iteration of network neutrality rules?

A: Yes.

7. Should you be confirmed, will you commit to visit South Dakota or a similarly situated rural state within the first year of your tenure as Chairman to see firsthand some of the communications challenges facing rural communities?

A. Yes.

8. During your testimony at the hearing, you mentioned your service on the first board of the Universal Services Administrative Company (USAC). Please fully describe your experience on the first board of USAC, and include your views on USAC's role in administering the USF, as well as how USAC can be improved or reformed.

A. As a member of the Board of USAC in the late 90s, I was able to help establish that company as it was going through implementation of the 1996

Telecommunications Act's new, explicit mechanism to fund universal service. While I am no longer privy to the inner workings of USAC, I know based on its public reports that it has maintained very low administrative expenses. If confirmed, I am certain I will have more information to help inform any reforms that may be needed, but I commit to you that I will look into these issues.

9. USF reforms have had a significant impact on rural states like South Dakota. Should you be confirmed, how do you intend to provide greater regulatory certainty in the USF program for rural broadband providers, particularly rate of return carriers? Please be specific.

A. A goal of the Commission's unanimously adopted high cost universal service program reforms was to ensure that the Fund could deliver broadband in a fiscally responsible way to the more than 18 million Americans who lack access to this service. I know this program is critical to assisting rate of return companies, as well as price cap carriers, in bringing service to rural America. While I do not have any specific reforms in mind right now, I can commit to moving forward with the reforms that the Commission recently directed the Wireline Bureau to implement in the Sixth Order on Reconsideration of the USF Reform Order. The actions taken by the Commission in that order and other recent Wireline Bureau efforts, largely made at the request and with the support of rural carrier associations, were intended to provide greater certainty for rural carriers. I will ensure the Commission's direction to the Bureau is expeditiously implemented while also reviewing the record for other possible actions as appropriate.

10. The statutory principles for universal service include affordability, particularly for those consumers in rural areas. Given the ongoing implementation of comprehensive USF distribution reform, how can the Commission best ensure that rates for advanced telecommunications and information services in the highest cost rural areas remain affordable for consumers?

A. The Commission can meet the statutory requirement that rates in rural areas be reasonably comparable to rates in urban areas by continuing to maintain a universal service system that subsidizes legitimate costs in high cost areas where service would not otherwise be offered absent support. I am committed to moving forward with the broadband reforms unanimously adopted by the Commission, but am also open to modifications to the reforms if justified by sound data.

11. During your testimony at the hearing, you indicated that USF should be addressed in its "totality," looking at both the contribution and disbursement sides of the program. Do you intend to address contribution reform in a substantive way prior to, or in concert with, any possible expansion of the USF program? What steps, if any, will you take to reform the contribution side of USF, if confirmed? Have you ever taken a public position on reforming the contribution side of USF? If so, please provide any writings on the subject or other citations.

A. Ensuring a stable funding mechanism for universal service is critical. I think it is important to make efforts to ensure a level playing field for similar services with regard to contributions obligations and to eliminate opportunities for regulatory arbitrage resulting from a lack of clarity as to the applicability of contributions obligations for new services. The Commission initiated a rulemaking proceeding in 2012 looking to modernize the USF contributions system – both in terms of who should contribute and how. I look forward to working with my fellow commissioners to find a path forward.

12. The President has recently rolled out a plan to expand the E-rate program, known as the ConnectED initiative, to connect 99 percent of America's students to high-speed broadband within five years. The USF contribution factor has doubled over the last decade, and the overall size of USF has ballooned to nearly \$9 billion annually. The current E-Rate program is already heavily oversubscribed, with USAC receiving applications in 2012 requesting over \$5 billion in support from the \$2.2 billion program. Given your expertise as a member of the first USAC board, what is your assessment of how much the President's ConnectED initiative will increase the size of the current Schools and Libraries program? Do you believe it is feasible to meet the President's goal of 99 percent within five years while keeping the overall size of the USF program at its current level? If so, what other part or parts of USF would you cut to accomplish that goal?

A. Real per student funding under the E-Rate program is down by one-third since its enactment (adjusted for inflation). This was a program that I helped implement when I was on the Board of USAC and it has been a success in its current formulation, providing basic Internet access to virtually every school in the country. I know the Commission has circulated an item on modernizing the program and I expect that the item seeks comment on this very issue. That will help determine whether and how much the fund might need to increase. I look forward to reviewing that record and working with my fellow Commissioners on this important issue if I am confirmed.

13. In 2009, Senators Grassley, Harkin, and I wrote to then-Acting FCC Chairman Copps about a pending petition for reconsideration of its decision involving access charges some rural telephone companies charge to larger carriers for completing certain long distance calls. Our letter did not take a position on the merits of the dispute, but encouraged the FCC to make a decision in the near future in order to provide certainty to the telecommunications industry. Will you commit to taking action on this still pending petition in the near future, if confirmed?

A. If confirmed, I will look into this petition.

14. Rural Americans are facing significant call completion problems. One study indicates that, during one period between 2011 and 2012, the incompleteness rate was 13 times higher in rural areas than in non-rural areas. Calls that fail to be completed result in rural businesses losing customers and family members in rural areas being cut off from each other. How familiar

are you with the call completion problems being experienced in many rural areas of the country, and would you commit to using your authority as chairman to put an end to such problems, should you be confirmed?

A. As I mentioned at the hearing, rural call completion problems represent a serious problem both for public safety and business reasons. Call completion is a bedrock principle of our communications network. In the last couple of years the Commission has taken steps to both clarify its rules in this area and for the first time to make clear that the originating carrier is responsible for ensuring calls are completed even when it hands it off to an intermediary. The Commission has also taken enforcement action against one company. I will ensure that the rules in this area are enforced.

15. You have noted that the IP transition issue is one of the top challenges facing the FCC. If confirmed, how will you approach this important issue, and what impact do you think the IP transition will have on rural areas like South Dakota?

A. As technologies transition, the FCC must remain committed to certain core values, including the promotion of competition, consumer protection, universal service, and public safety – regardless of location. While the Commission must analyze legacy rules and regulations and adapt to reflect changes in the communications landscape, new communications networks and services do not change the Commission’s mission, including for rural areas. It is very important to maintain sufficient consumer protections and access to emergency services during the transition in all areas, including the most remote parts of the country. Rural and remote areas present unique challenges that must be considered when developing policies in a changing communications landscape.

16. I represent a rural state and am committed to expanding telecommunications opportunities for people in rural communities. At a 2001 House Energy & Commerce subcommittee hearing, you stated: “Wireless carriers, as a result of government policy, for the most part, have a very difficult time going into rural areas and providing the kind of high speed service. They've got to compete against companies that are subsidized, et cetera. There is great opportunity for wireless carriers to do in the United States what they've done in South Africa and other countries around the world if we can be allowed to get there.” Are there government policies that are presently holding wireless carriers back from offering service to rural Americans? If so, what measures would you take as FCC Chairman to eliminate these obstacles, if confirmed?

A. Fortunately, in the dozen years since I made that statement wireless service has significantly expanded in rural America. Funding remains an obstacle to investment for wireless carriers in rural America. The Commission’s Mobility Fund should help address some of those needs, but I know more will need to be done and look forward to exploring with the Committee ways to remove barriers and how to promote opportunities to deliver wireless service to rural America.

17. Please answer yes or no—all other things being equal, does the presence of more qualified bidders in a spectrum auction lead to higher proceeds than one with fewer qualified bidders?

A. Auction design is far too complicated for a simple “yes” or “no” answer to your question, and there are certainly varying perspectives among the experts on this subject. The Commission staff and auction design experts are looking into this issue. The statute passed by Congress provided the Commission with two important directives: (1) the Commission must ensure that all are eligible to participate, but (2) the Commission may limit participation through rules of general applicability. The Commission is currently conducting a public proceeding to explore these issues and I will be guided by the statutory requirements adopted by Congress.

18. Please answer yes or no—during the spectrum auctions, do you support allowing every qualified bidder (defined as an entity that complies with all auction procedures and requirements and meets the technical, financial, character, and citizenship qualification that the FCC may require under sections 303(l)(1), 308(b), or 310 of the Communications Act) to bid on any license up for auction? If no, please explain under which circumstances you would exclude qualified bidders from participating in the auction.

A. See previous answer.

19. Given your deep experience with spectrum policy, particularly as a wireless industry association leader, please share your views on previous FCC auctions. Specifically, what policies do you feel attract the most bidders, revenue, and service build out, and what policies should be avoided in future auction planning?

A. A diverse offering of service area sizes and spectrum blocks promotes successful auctions. Also, certainty of the rules before the auction helps all that participate properly evaluate their bidding opportunities based on their individual business models. Finally, allowing sufficient time to arrange for capital to bid helps promote participation.

20. During the hearing, you said that the 1755-1780 MHz band needs to be paired with the 2155-2180 MHz band and auctioned by 2015. I wholeheartedly agree. Chairman Genachowski directed FCC staff to draft a rulemaking to do just that. If confirmed, will you follow in your predecessor’s footsteps and issue that proposed rulemaking?

A. Yes. The Commission recently circulated an item seeking comment on this and other proposals. I will follow through on that rulemaking and will work with NTIA and other federal users of spectrum to explore opportunities such as this one.

21. In testimony before Congress in 2001 you described the potential “win-win” situation of the Defense Department having access to the spectrum it needs to have a 21st century military while making sure there is adequate spectrum available for commercial use. As we examine

opening up the 1755-1780 band and other spectrum bands for commercial use, how will you show leadership in working across the government to ensure a “win-win” situation for this country?

A. This is a situation that will take all of us – Congress, the Commission, NTIA, and federal spectrum users -- working together to resolve. If confirmed, I intend to fully engage on this issue to find those “win-win” opportunities.

22. During our meeting in my office and in your previous testimony before Congress you have discussed your role working with the Department of Defense in getting government spectrum into the hands of the private sector. You have noted that we must give the proper incentives to DoD and other government agencies before these agencies will relinquish access to this spectrum. In your opinion, what sort of incentives should be offered? Also, should government agencies be incentivized to act in the public interest?

A. In my previous work on getting spectrum converted to commercial use, I found that providing a funding source to cover the costs of relocation and equipment was an important component. In a budgetary environment like the one we are in now, it is important that government users of spectrum have an ability to cover the costs of moving and to modernize the equipment they need in doing so. Budgetary realities are a real issue for these agencies and Congressional recognition of those needs may help incentivize these users. If confirmed, I look forward to working with all stakeholders to figure out a path forward because the spectrum shortage cannot be fully addressed unless we find ways to clear and share more federal spectrum.

23. In 2001, you told this Committee that “there needs to be a spectrum policy in this country” but that “We don’t have a plan.” It is now 2013—in your opinion, do we have a spectrum policy in this country? If not, what would you do as Chairman of the FCC to ensure that we have such a policy?

A. The National Broadband Plan established a clear spectrum target to address growing demand. That plan and target have been reinforced by two presidential memoranda as well as Congress’ passage of incentive auctions legislation. More can certainly be done and I look forward to working with the Committee to explore other opportunities.

24. There are indications that some people within the FCC may be interested in limiting payments to broadcasters during the incentive auctions. Other stakeholders believe that the key to a successful auction, and to raising the money for FirstNet, is to offer sufficient financial incentives to attract lots of TV stations and secure a lot of spectrum that can then be sold to the wireless carriers. What is your view?

A. I am committed to holding an auction that encourages robust broadcaster participation and frees up significant amounts of spectrum for wireless providers to bid on. That is my goal.