

U.S. DEPARTMENT OF COMMERCE  
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NATIONAL TELECOMMUNICATIONS AND INFORMATION  
ADMINISTRATION (NTIA)  
+ + + + +  
PUBLIC MEETING OF THE  
COMMERCE SPECTRUM MANAGEMENT  
ADVISORY COMMITTEE (CSMAC)

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MONDAY,  
DECEMBER 13, 2010

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The Committee convened at 11:00 a.m. via teleconference, Dale N. Hatfield and Bryan Tramont, Co-Chairs, presiding.

MEMBERS PRESENT:

Dale N. Hatfield, Co-Chair

Independent Consultant and Adjunct Professor,  
University of Colorado

Bryan Tramont, Co-Chair

Managing Partner, Wilkinson Barker Knauer, LLP

David E. Borth

Corporate Vice President for Advanced  
Technology, Standards and Common Engineering  
Enterprise Mobility Solutions, Motorola Inc.

Michael C. Calabrese

Vice President and Director, Wireless Future  
Program, The New American Foundation

MEMBERS PRESENT, CONTINUED

Martin Cooper

Executive Chairman and Co-Founder, ArrayComm,  
LLC

Susan Crawford

Faculty, Cardozo Law School; Former Special  
Assistant to the President for Science,  
Technology and Innovation Policy

Mark E. Crosby

President & Chief Executive Officer,  
Enterprise Wireless Alliance

David L. Donovan

President, MSTV, Inc.

Gary Epstein

Executive Vice President for Law and  
Regulations, SkyTerra Communications

Dr. Brian Fontes

Chief Executive Officer, National Emergency  
Number Association

Dr. Harold Furchtgott-Roth

President, Furchtgott-Roth Enterprises

Robert M. Gurs

Director of Legal & Government Affairs,  
Association of Public-Safety Communications  
Officials

Dr. Mark A. McHenry

President, Shared Spectrum Company

Darrin M. Mylet

Co-Founder, Spectru-Station/Wireless  
Infrastructure & Network Services (WINS)

Neville Ray

Senior Vice President, Engineering and  
Operations, T-Mobile USA, Inc.

MEMBERS PRESENT, CONTINUED

Richard Reaser, Jr.

Head, Spectrum Management Department, Raytheon  
Space & Airborne Systems

Gregory Rosston

Deputy Director, Stanford Institute of  
Economic Policy Research, Stanford University

R. Gerard Salemm

Executive Vice President - Strategy, Policy,  
and External Affairs, Clearwire Corporation

Jennifer Warren

Vice President, Technology Policy &  
Regulation, Lockheed Martin Corporation

ALSO PRESENT:

Joe Gattuso

Designated Federal Official

Byron Barker

Karl Nebbia

Associate Administrator, Office of Spectrum  
Management, National Telecommunications and  
Information Administration

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P-R-O-C-E-E-D-I-N-G-S

(11:17 a.m.)

CO-CHAIR TRAMONT: Welcome, everyone, to the Commerce Department's Spectrum Management Advisory Committee for December 13th, 2010. Our focus today will be to review the incentive subcommittee report that was submitted in draft form at the last in-person meeting of the CSMAC.

In response to that meeting, we have now circulated internal comments and edits to the advisory committee, to the entire group, and this is a follow-up to that, to those edits that have already been received, anticipating the deadline that was agreed to at the last advisory committee.

I would ask -- we have -- I'm hoping that we do not need to occupy the entire three hours that folks have blocked for today. In an effort to do that and facilitate the discussion, focusing on productive areas, if you have line edits, that is to say things

1 that clarify or expand briefly on things that  
2 are in the draft, I ask that those be sent to  
3 Michael under the committee by Friday of this  
4 week.

5 We do not need to review line  
6 edits or clarifying edits during the course of  
7 the call today. That would -- I don't think  
8 that's a productive use of everyone's time.  
9 So unless someone has concerns about Friday  
10 being too early, we would ask that by Friday  
11 of this week folks send in any additional line  
12 edits that they have to the draft that was  
13 circulated on Friday, December 10th, which  
14 does reflect a series of edits from a number  
15 of different folks. So line edits by Friday.  
16 Any concerns about that?

17 (No response.)

18 CO-CHAIR TRAMONT: Excellent. So  
19 with that, I'm going to turn it over to  
20 Michael, who's going to give an overview of  
21 the report and what's been done to date, and  
22 then I will take back the mic for a little bit

1 and talk through the revised draft since  
2 Michael and I have been working together on  
3 that.

4 And then we'll, hopefully, that  
5 will be a -- that will focus on big picture  
6 edits, and then we will move from there to the  
7 public participation and comments. And then  
8 we can adjourn. So with that, I'll turn it  
9 over to you, Michael.

10 MEMBER CALABRESE: All right.  
11 Well, thanks, Bryan. And thanks to everyone  
12 for tuning in for this special meeting on an  
13 important topic. So the draft right now  
14 covers, you know, three separate  
15 recommendations or sets of recommendations  
16 that we'll discuss in turn. Probably I would  
17 anticipate spending most time on spectrum  
18 fees, since that, you know, seemed to attract  
19 the greatest discussion at the last general  
20 CSMAC meeting, which we didn't have time to  
21 delve into so deeply.

22 But then there's also two other

1 areas of recommendations. Strengthening OMB  
2 Circular A-11, and a Spectrum Innovation Fund.  
3 And we'll, you know, we'll go on to those in  
4 turn, and in fact, you know, what we probably  
5 need to do is cut off the discussion on fees,  
6 you know, at some point.

7 You know, as Bryan said, hopefully  
8 we won't need the entire time, but if it's  
9 looking that way, I would think by, you know,  
10 12:45-ish, you know, we should move on to the  
11 other topics. But we'll start with fees.

12 And just by way of overview, the  
13 report -- well, essentially, what happened  
14 with the report is that we -- you may recall  
15 we brought back an initial draft that made a -  
16 - in the main body of the report, made a  
17 recommendation that fees should be implemented  
18 for federal users, you know, a simple fee on  
19 spectrum on a -- a simple, flat rate, per  
20 megahertz pop fee, starting at a rate  
21 considerably below market-clearing price, but  
22 then increasing gradually on the order of --

1 probably over a period such as five years,  
2 that was indicated.

3 And then we had in the --  
4 attached, as an appendix, a kind of a  
5 dissenting view. But the committee was close  
6 to evenly split. In other words, it was --  
7 the recommendation in favor of fees was just  
8 a narrow majority. And so, you know, there  
9 became kind of some disagreement about whether  
10 it should be in -- you know, the other opinion  
11 should be in an appendix or instead, whether  
12 we could more usefully integrate the two sets  
13 of views in the main body.

14 And I think, you know, Jennifer  
15 Warren and Julie Zoller in particular had  
16 encouraged that. And Jennifer initially sent  
17 a draft back soon after the meeting, you know,  
18 moving the -- I guess what we were initially  
19 calling the dissenting view -- you know, as  
20 kind of a Section B on fees, you know, in the  
21 main body.

22 And then Bryan was able to quite

1        nicely -- he was able to weave those, in a  
2        sense, together, so that it flows more as a  
3        unified text. So the way it works now is that  
4        the report opens up by giving some of the, of  
5        course, background on the fact that the market  
6        for spectrum access and rights, you know, does  
7        not function efficiently as a market because  
8        there's, you know, lots of obstacles to  
9        transferring spectrum rights.

10                    And then it goes into  
11        consideration of spectrum fees, talks about --  
12        initially about the benefits of having a  
13        simple, flat rate, per megahertz pop fee that  
14        would phase in over time, the experience of  
15        the U.K.

16                    It raises a whole number of  
17        questions about the actual implementation.  
18        This is on page 4. In other words, you know,  
19        what would the fee structure look like, both  
20        for government users and FCC license holders.  
21        What frequency bands and services should be  
22        subject? Because there could be exceptions.

1 How would it be allocated among primary and  
2 secondary users? Because a fairly significant  
3 portion of the spectrum -- for example, half  
4 of the spectrum below 3,700 megahertz is  
5 shared, with federal use primary and private  
6 sector use secondary. So how would it -- how  
7 would the fees be shared among primary versus  
8 secondary, among federal and non-federal?  
9 What about unlicensed? How would agencies  
10 budget? What would be the receipts -- the  
11 revenues be used for? Et cetera.

12 So a number of questions raised,  
13 potentially for our further study, but they  
14 are quite complex questions that may need  
15 greater transparency into what the federal  
16 bands are actually, you know, used for, which  
17 we don't have.

18 Then it moves on to talk about  
19 some of the concerns, that's at the top of  
20 page 7, that some subcommittee members  
21 stressed. And there were roughly six of  
22 those. One, that the, you know, the fees in

1 the U.K. are not determined by the actual  
2 market. In other words, they don't reflect  
3 the actual market price, but are set by  
4 regulators. And that it would be very  
5 difficult to have a market price, since there  
6 are not alternatives out there in the  
7 marketplace for some of the sorts of uses of  
8 federal users, like radar and such.

9           Second, probably very -- one  
10 that's strongly felt, is that it's -- is that  
11 there's a lot of intangible value, opportunity  
12 cost to society that needs to be taken into  
13 account, and that we must avoid, you know,  
14 disrupting public safety, national defense,  
15 scientific exploration, and so on. That, you  
16 know, that the value of those activities need  
17 to somehow be factored into the equation.

18           Third, there was a concern that  
19 agencies may not be able to afford the  
20 spectrums to fulfill their missions, and that,  
21 you know, and that in this budget climate new  
22 appropriations may not be realistic or even

1 warranted.

2           And then fourth, that a concern  
3 that in many cases the fees could have no  
4 effect, because if it becomes general overhead  
5 at the highest level of the Department, but  
6 the actual spectrum management decisions are  
7 being made at a different operational level,  
8 and not being felt by those individuals.

9           And then finally, that there's  
10 far-reaching consequences, potentially, for  
11 international access to spectrum, you know, by  
12 U.S. companies and even the military, that if  
13 we establish a precedent for fees, among other  
14 things, that other countries will be  
15 emboldened to charge, you know, American users  
16 the same fees, you know, everywhere around the  
17 world.

18           So anyway, that's kind of the  
19 overview. Right now it's woven together so  
20 that it's not, if -- bottom line, I guess, is  
21 that it's not a -- it's not an absolute or  
22 strong recommendation to impose fees, so much

1 as it is a suggestion that fees would overall  
2 be beneficial, but that there are offsetting  
3 concerns that need to be taken into account,  
4 and so policymakers need to weigh these  
5 things, on the one hand, on the other.

6 Bryan, did you want to say  
7 anything more about what your intention was in  
8 trying to bridge these?

9 CO-CHAIR TRAMONT: Nope. I think,  
10 you know, we did -- we tried to reflect --  
11 well, we tried to move towards a unified  
12 draft. That was something that was very  
13 important to folks, and so we tried to  
14 incorporate that into the overall document  
15 and, as best we could, try to maintain the  
16 integrity of both sections, and just kind of  
17 make them sort of make sense to a reader who's  
18 trying to figure out what it is we're saying.

19 So that was certainly the effort  
20 that was made. And Michael, you're going to  
21 talk about the last few sections, and then  
22 I'll start the editing process?

1                   MEMBER CALABRESE: Do you mean the  
2 other two issues?

3                   CO-CHAIR TRAMONT: Yes.

4                   MEMBER CALABRESE: Oh, okay.

5                   CO-CHAIR TRAMONT: Why don't we  
6 just give an overview of the whole document,  
7 and then we can go through each individual  
8 section.

9                   MEMBER CALABRESE: Oh, sure, sure.  
10 Okay. So the -- this -- the next section  
11 makes, you know, very specific recommendations  
12 about strengthening the OMB Circular A-11  
13 process pertaining to spectrum, because  
14 currently, Circular A-11 in Section 33.4  
15 requires agencies to take the economic value  
16 of spectrum into account, but it's actually  
17 fairly vague, and seems more about asking them  
18 to try to estimate what it might be worth,  
19 without actually having any sort of  
20 transparent accountability.

21                   And so the recommendation is  
22 actually in the form, at the end of the

1 section, of a redrafted Section 33.4 that  
2 incorporates a specific checklist of things  
3 that need to be included -- that they need to  
4 certify, you know, were included in the RFP,  
5 as well as in terms of their own process in  
6 the -- in procurement.

7 The most important -- probably the  
8 most important of these is that agencies shall  
9 indicate whether the system procured was the  
10 most spectrum-efficient solution among  
11 qualified bids, in other words, that meet  
12 operational requirements.

13 And if the agency isn't able to  
14 indicate, you know, they need to -- in other  
15 words, if it wasn't, then they need to  
16 indicate the investment difference between the  
17 solution chosen and a more spectrum-efficient  
18 approach.

19 And, you know, and in some ways,  
20 that could potentially tie into the Spectrum  
21 Innovation Fund, where, you know, there could  
22 potentially be outside or additional resources

1 to, you know, to opt for an equally good but  
2 more spectrum-efficient system in the future.  
3 At least we hope.

4 The Spectrum Innovation Fund is  
5 the final section, and essentially there we  
6 recognized that agencies -- oh -- well -- that  
7 there was a -- that they essentially do not  
8 have an incentive, always, to adopt the more  
9 spectrum-efficient alternative if that's more  
10 expensive to the agency, since they're  
11 focused, of course, on maximizing the success  
12 of their own mission.

13 And that would particularly come  
14 into play for something like spectrum sharing,  
15 you know, to facilitate spectrum band sharing,  
16 which may not only have costs, but risks to  
17 the agency's mission, and not necessarily any  
18 benefit, you know, coming back directly to the  
19 agency.

20 In addition, the existing  
21 precedent for this, the Spectrum Relocations  
22 Fund that was created by Congress under the

1 Commercial Spectrum Enhancement Act of 2004,  
2 does not adequately fund up front costs for  
3 research, planning, testing.

4 And so the basic recommendation is  
5 to broaden the allowable purposes of the  
6 CSEA's Spectrum Relocation Fund, creating a  
7 Spectrum Innovation Fund to reimburse approved  
8 federal users for the -- for their up front --  
9 for up front research, planning, testing, and  
10 possibly other costs related to modernizing  
11 federal systems, not only to migrate off  
12 bands, but also to facilitate more efficient  
13 or shared use, including with commercial users  
14 or with other federal users, and that this  
15 should be a revolving fund, seeded with  
16 auction revenue but budget-neutral.

17 And we say that subsequently the  
18 Spectrum Innovation Fund could be replenished  
19 through any number of options, although the  
20 subcommittee did not come to any conclusion or  
21 single view on what, you know, ongoing funding  
22 option would be the best approach. And we

1 just, you know, just talked generally about  
2 the fact that spectrum fees or leasing revenue  
3 could be available, but do not conclude, you  
4 know, which would be best or at what level of  
5 funding.

6 CO-CHAIR TRAMONT: Great, Michael.  
7 Thank you for that. So I am going to proceed  
8 as followed. I'm going to just take chunks of  
9 the draft, and try and get folks -- if there  
10 are any, as I said, macro-changes to the draft  
11 in that section, then please let us know.  
12 Line edits, once again, by Friday.

13 So we can start. The introduction  
14 and background is three pages long. Michael  
15 reviewed it. There were minimal changes to  
16 the two prior drafts. Does anyone have any  
17 changes to the introduction and background?

18 MEMBER DONOVAN: Bryan, this is  
19 David. I don't know whether this qualifies as  
20 a line edit or not, but the second paragraph,  
21 where it's providing that broadcasting is an  
22 example of use where -- that is limited in

1 terms of, you know, what can be used in those  
2 bands.

3 I don't know whether we ought to  
4 single out -- unless we're going to list all  
5 the other services that are likewise under  
6 similar restrictions, I think we ought to just  
7 single, you know, just take out the last  
8 sentence in the -- in that paragraph.

9 CO-CHAIR TRAMONT: Oh, I see.

10 MEMBER DONOVAN: Okay, it's --  
11 because you either list them all or you don't.  
12 And so, you know, I don't -- if that qualifies  
13 as a line edit, I'm more than happy to not get  
14 into this and just send it to you by Friday.

15 CO-CHAIR TRAMONT: Probably closer  
16 to line, David, but I think -- I appreciate  
17 your raising it. Does anybody object to  
18 striking the example of broadcasting?

19 (No response.)

20 CO-CHAIR TRAMONT: Okay.

21 MEMBER DONOVAN: Thank you.

22 CO-CHAIR TRAMONT: Thanks.

1 Anything else on the first three pages? Well,  
2 the first section, the introduction and  
3 background.

4 (No response.)

5 CO-CHAIR TRAMONT: Okay.

6 Consideration of spectrum fees, the next  
7 section, is more substantial in length. It  
8 goes from page three to page ten. There is  
9 one issue that we need to discuss that's been  
10 flagged in some of the edits, and I should  
11 have mentioned -- I'm sorry. I apologize. I  
12 should have mentioned this before we started  
13 the line edits.

14 A number of committee members have  
15 sent line edits over the course of the last  
16 few weeks, and I wanted to acknowledge -- the  
17 edits and the changes reflected here are Bob  
18 Gurss, there's suggestions from Janice, Greg  
19 Rosston, Jennifer Warren, Julie Zoller, Jim  
20 Lewis, and a bunch of other folks have  
21 submitted stuff.

22 So first, thank you all for your

1 contributions. And I hope that we have not  
2 done violence to your intent in trying to  
3 reconcile them with the draft and come to some  
4 accommodations here.

5 But if folks don't have changes  
6 before page five, there is one issue that was  
7 sort of flagged in the text, which was to  
8 consider adding a third exception for  
9 unlicensed devices using the spectrum. Does  
10 anyone have changes before we get to the sort  
11 of bolded text on page --

12 MEMBER DONOVAN: Bryan, I have --  
13 it's David again. I have a question and -- at  
14 a conceptual level, but it may be a very minor  
15 edit when it comes right down to it. In the  
16 third paragraph where it says, "One step  
17 towards greater efficiency of spectrum would  
18 be for the federal government to apply a  
19 simple fee on spectrum."

20 CO-CHAIR TRAMONT: Yes?

21 MEMBER DONOVAN: That is a rather  
22 broad statement across the board, and equating

1 fees with greater efficiency. I don't know  
2 the debates that went on in the subcommittee,  
3 and I didn't know whether we wanted to say,  
4 for example, "It has been noted by some that  
5 one step towards greater spectrum efficiency  
6 would be for the federal government to apply  
7 a simple fee on unused spectrums."

8 It seems a rather broad statement  
9 that then is countered later on in the  
10 document, and so I didn't know whether we  
11 wanted to qualify it or whether it was the  
12 position of the committee to make that just  
13 full out, that yes, we do equate greater  
14 spectrum efficiency with fees.

15 CO-CHAIR TRAMONT: And you -- the  
16 edit you just made I thought was interesting  
17 the way you basically changed it. The one  
18 step towards greater efficiency of spectrum  
19 usage would be for the federal government to  
20 apply a simple fee on -- and you said unused.

21 MEMBER DONOVAN: I inserted the  
22 word unused.

1 CO-CHAIR TRAMONT: I wonder if  
2 underutilized or something along those --

3 MEMBER DONOVAN: That's fine.

4 MEMBER FURCHTGOTT-ROTH: Now I --  
5 this is Harold. I think that would not make  
6 any economic sense.

7 CO-CHAIR TRAMONT: Okay. Well,  
8 then, the alternative would be to qualify up  
9 front that says, "It has been noted by some,"  
10 or "Some argue," or does that water it down  
11 too much?

12 MEMBER CALABRESE: Well, if we did  
13 that -- this is Michael -- I think if we did  
14 that, we'd have to put it back into -- put  
15 that back into where we're talking about the  
16 concerns. So it may be possible to say that,  
17 you know, if there's more than just David with  
18 this view that some committee members also  
19 thought that a fee could be more effective if  
20 it was targeted to bands that were not fully  
21 utilized, something along those lines.

22 CO-CHAIR TRAMONT: Well, I --

1                   MEMBER CALABRESE: But it would be  
2 back in the concerns part, probably not up  
3 front where, I think, the majority, at least,  
4 generally thought that fees had a beneficial  
5 effect.

6                   MEMBER ZOLLER: This is Julie  
7 Zoller. I think that Bryan did a fantastic  
8 job melding all of the diverging concerns, but  
9 I take the point of the speaker. Perhaps if,  
10 rather than editing to add another word, maybe  
11 if it said, instead of would, it said could,  
12 that could solve the concern.

13                   MEMBER DONOVAN: I'm fine with  
14 that. Again, I'm not trying to be a block  
15 here. It's just a thought.

16                   MEMBER EPSTEIN: Bryan, this is  
17 Gary.

18                   CO-CHAIR TRAMONT: Yes?

19                   MEMBER EPSTEIN: And I also think  
20 you did a terrific job. You had -- you both -  
21 - you and Michael had a really tough task.  
22 But at the highest level, I guess, when I read

1 this and I read this again, I'd like you to  
2 answer the question that maybe Carl always  
3 asks.

4 In the end, do we -- what's our  
5 recommendation in this section? Is it that  
6 we're going to study it further, or that there  
7 are various points of view, or -- and I know  
8 how difficult it was to get to this point, but  
9 is there a -- how would you characterize what  
10 the recommendation is?

11 CO-CHAIR TRAMONT: It has to be to  
12 study it further. I mean, I don't think you  
13 can have, as Carl's pointed out, you know, A,  
14 we're not well positioned and B, I don't know  
15 that we have -- we're not well positioned from  
16 an information point of view or from a  
17 temporal point of view to devote the resources  
18 necessary to craft a fee regime that could be,  
19 you know, instantly applied to the federal  
20 government. That's not going to happen.

21 It's certainly not going to happen  
22 in the four weeks we have remaining in this

1 CSMAC, and it's just not realistic. We -- so  
2 the goal of the document is to raise the  
3 positive points about spectrum fees, what are  
4 the positive attributes of spectrum fees. And  
5 then also to flag the concerns, so that when  
6 the administration, if they choose to go  
7 forward with spectrum fees, has the benefit of  
8 our issue-spotting concerns about how best to  
9 design such a fee structure.

10 I think that's the best we can do  
11 for now. And that's why I think, you know,  
12 I'd be curious about Harold, Greg, and others,  
13 about the would-to-could edit, if that  
14 troubles them. Because Julie's  
15 recommendation, I thought, could work --  
16 pardon the pun -- might actually solve that  
17 issue.

18 MEMBER FURCHTGOTT-ROTH: Well this  
19 is Harold. I think if we start shifting  
20 woulds to coulds, then we'd have to shift  
21 woulds to coulds throughout. You know, it's -  
22 - you know, quite candidly, I think the

1 document is very watered down at this point,  
2 to the point where it really doesn't say much  
3 of anything.

4 And if we want to water it down  
5 some more, I think on the reservation side  
6 we'd have to water down the reservations as  
7 well. But, you know, I defer to the view of  
8 the majority. If the majority would prefer to  
9 have it watered down, then go ahead.

10 But, you know, at some point, when  
11 the statements are so tentative and so lacking  
12 in conviction, that at some point I just  
13 wonder the value of the whole document.

14 MEMBER DONOVAN: I'm not -- while  
15 I'm the one who raised it, this is Donovan,  
16 I'm not going to -- I don't want to undo what  
17 appears to have been a significant amount of  
18 work here. Whatever the folks want to do is  
19 fine by me. Even if you footnote and cross-  
20 reference the discussion later on, maybe would  
21 be one way around it? But I'll recede. You  
22 know, I won't -- I'm not going to push this.

1                   MEMBER WARREN: This is Jennifer -  
2                   -

3                   MEMBER EPSTEIN: This is Gary  
4                   again. I mean, responding to what Harold  
5                   said, you know, I think, given where we are,  
6                   I think what this document does is it does  
7                   provide a service, because it does raise the  
8                   next set of questions. It digs down one layer  
9                   below.

10                  Maybe they're obvious and maybe  
11                  they're not, but at least it provides a  
12                  construct if we're going to go down this path  
13                  in the future.

14                  CO-CHAIR TRAMONT: And I am  
15                  concerned -- this is Bryan. I am concerned  
16                  about the Harold point, which is, you know, if  
17                  you flip back, and I just did this as he was  
18                  speaking, you know, the concerns that are  
19                  raised about fees later, about they must,  
20                  instead, you know, the following additional  
21                  considerations must be taken into account.

22                  Well, if we change the would to a

1       could, then the must may be turned into a  
2       could be taken into account. You know, we get  
3       a -- it does end up becoming -- I don't know  
4       if it -- it seems like it's less productive.

5                 Jennifer Warren, I know you were  
6       in the queue. Do you have something else?

7                 MEMBER WARREN: Thank you. I just  
8       -- I agree with the -- Gary's last statement  
9       about the value, and I -- but I also think  
10      that overall, we can't measure this document  
11      by one section. There's a number of things in  
12      here, and I think we shouldn't lose sight of  
13      that when we talk about sort of the value of  
14      the overall discussion.

15                But I'm fine with as Gary left it,  
16      and I have no changes that I am seeking right  
17      now.

18                CO-CHAIR TRAMONT: Okay. With  
19      that, David, if you're --

20                MEMBER DONOVAN: Yes, I'm fine  
21      with that.

22                CO-CHAIR TRAMONT: -- so inclined,

1 and unless others feel strongly about changing  
2 the would to a could or some other  
3 modification yet to be heard from, I think  
4 we're going to keep that the way it is.

5 MEMBER DONOVAN: Fair enough. I  
6 apologize for bringing that up.

7 CO-CHAIR TRAMONT: No, no. It is  
8 an open process. So does anyone else have  
9 anything before page five?

10 MR. GATTUSO: This is Joe Gattuso.  
11 Just as a practical matter, something that I  
12 know Carl and I have asked before, when the  
13 committee makes recommendations, we'd like it  
14 to be very clear that the recommendation is  
15 directed to NTIA. Because your charge as an  
16 advisory committee is to advise the Assistant  
17 Secretary of Commerce.

18 This particular section, it seems  
19 fairly clear that the report recommends that  
20 NTIA take an action. It's less clear as to  
21 what NTIA's position should be with respect to  
22 FCC action.

1                   And I wanted to lay this out here,  
2                   on page four, as we proceed into the  
3                   recommendations later in the document, it's  
4                   less clear what NTIA could do. But perhaps  
5                   the committee could address that as it  
6                   continues its review.

7                   CO-CHAIR TRAMONT: Thanks, Joe.

8                   MR. GATTUSO: Thank you.

9                   CO-CHAIR TRAMONT: The next -- in  
10                  terms of -- actually, Jennifer, you had raised  
11                  this unlicensed question that informs the  
12                  bolded text on page five.

13                  Ms. Warren?

14                  MEMBER WARREN: Sorry, I had to go  
15                  off mute.

16                  CO-CHAIR TRAMONT: That's okay.  
17                  Pretty sure it was you and I was worried I  
18                  couldn't -- we had lost you. Do you want to  
19                  just flesh that out, and then we can come to  
20                  a consensus on whether it makes sense to draft  
21                  some language around that?

22                  MEMBER WARREN: I actually was a

1 little surprised at this text. And I  
2 apologize, I must have been unclear earlier.  
3 I did not think we should be exempting  
4 unlicensed devices from the scope of the  
5 discussion here.

6 So at least that's how I read this  
7 section -- oh, I see. I see. Right. That  
8 the unlicensed devices do not actually pay for  
9 their use of the spectrum, I think, was the  
10 comment I had raised, and I wasn't sure why  
11 that they were dropped out, when on the  
12 Spectrum Innovation Fund side they were  
13 factored in.

14 CO-CHAIR TRAMONT: So, and --  
15 Jennifer, I apologize, because I sort of  
16 truncated what you had originally sent us.  
17 But your original text was where there is  
18 unlicensed service devices using this  
19 spectrum, there has been no recovery of the  
20 use of this public resource by the  
21 manufacturers of these devices. We'd need to  
22 add appropriate text, but essentially, if --

1 even if on a non-interference basis, now  
2 unlicensed community is imposing restraints on  
3 other spectrum users, et cetera et cetera et  
4 cetera.

5 So this -- you need -- right now  
6 this section has two exceptions, where non-  
7 government users do not realize the full  
8 opportunity cost. Jennifer's proposal would  
9 be to add a third, so essentially it would say  
10 third where there is unlicensed devices, et  
11 cetera et cetera. So that's one where we  
12 hadn't really talked about it, except that we  
13 wanted to flag it for discussion on this call.

14 MEMBER WARREN: Right. Thank you.  
15 And I sort of hadn't looked at that again  
16 since I flagged it, but it was the  
17 inconsistency I thought of -- essential  
18 inconsistency, between the way the SIF  
19 addresses how easy it would be, I think, to  
20 realize value from the unlicensed devices, and  
21 then no mention of it, really, here. So I  
22 just raised that for discussion.

1                   MEMBER ROSSTON: This is Greg  
2                   Rosston. So I think that, you know, that the  
3                   unlicensed stuff -- sort of, I had imagined  
4                   that, in writing this, that it sort of fell  
5                   under the second -- well, I said second, but  
6                   I think explicitly stating unlicensed, it's a  
7                   -- where licensees do not have the opportunity  
8                   cost, and I think Jennifer's absolutely right  
9                   that the unlicensed guys don't realize the  
10                  opportunity cost of their use to the spectrum,  
11                  so I think that would be a possible thing to  
12                  add in as well.

13                  CO-CHAIR TRAMONT: So it would be  
14                  something like secondary bands, such as the  
15                  unlicensed bands and 450 to 470 or something  
16                  like that, just add something to that list?

17                  MEMBER ROSSTON: Yes, I think so.

18                  CO-CHAIR TRAMONT: And Jennifer,  
19                  does that accommodate your concern?

20                  MEMBER WARREN: I think so. I  
21                  think we may -- NTIA may reply that they don't  
22                  refer to bands as unlicensed bands, so maybe

1 we need to, you know, work that particular  
2 language, but yes. That would be fine.

3 CO-CHAIR TRAMONT: Does that --  
4 what do people think of that at a macro-level?  
5 Obviously, Greg, maybe I'd task you to just  
6 sort of implement that for that paragraph,  
7 working with Jennifer. But is there other --  
8 what do people think about that solution?

9 MEMBER WARREN: It is hard.

10 MEMBER ROSSTON: This is Greg.  
11 Yes.

12 CO-CHAIR TRAMONT: Does anyone  
13 object to including unlicensed band in the  
14 references as a -- to the second bucket of  
15 examples on paragraph five -- in page five,  
16 rather? Okay, Greg? Sorry, go ahead.

17 MEMBER CALABRESE: This is  
18 Michael. I was just saying, I think it makes  
19 -- yeah, it probably makes the most sense to  
20 work it in there as an example. So yes. So  
21 I think that's good, what they want to do.

22 CO-CHAIR TRAMONT: Greg, do you

1       feel comfortable with line edits by Friday for  
2       that paragraph?

3                   MEMBER ROSSTON:    Sure.

4                   CO-CHAIR TRAMONT:  Great,  
5       terrific.

6                   MEMBER ROSSTON:  Okay, I  
7       guess the question is Mark Crosby had edits on  
8       a version that he sent out, as well.

9                   CO-CHAIR TRAMONT:  Right, and  
10       which we just recently got, right?

11                   MEMBER ROSSTON:  Right.

12                   CO-CHAIR TRAMONT:  And it was just  
13       more specific --

14                   MEMBER WARREN:  This was specific  
15       to Michael's edits that went out Friday  
16       afternoon, I thought.  But I don't see edits.

17                   MEMBER CALABRESE:  Well, it goes  
18       beyond what -- the edits that were already  
19       there.

20                   MEMBER WARREN:  Yes, I think  
21       that's right.

22                   MEMBER CALABRESE:  Mark's are very  
23       specific about -- he's talking about the 35 to

1 512 megahertz private land/mobile radio bands.  
2 In other words, making the example more  
3 specific, and, you know, and specifying that  
4 it actually applies to a much larger range of  
5 spectrum than just 450 to 470.

6 CO-CHAIR TRAMONT: Mark, are you  
7 on?

8 (No response.)

9 CO-CHAIR TRAMONT: He was earlier.  
10 But is there any -- I guess, does anybody  
11 object to the Mark edits, as long as we are  
12 talking about them?

13 MEMBER ROSSTON: This is Greg. I  
14 think they're all great except for the last  
15 sentence?

16 MEMBER WARREN: Could I ask  
17 someone to read that? I apologize, I have not  
18 been able to get online to see those edits.

19 MEMBER EPSTEIN: I can read it.  
20 He just says, instead of mentioning only the  
21 sort of discrete example of 450 to 470, he  
22 says there are bands such as the 35 to 512

1 megahertz private land/mobile radio bands,  
2 where licensees secure authorizations that  
3 perhaps do not in all instances provide the  
4 occasion to realize the full opportunity cost.  
5 That could maybe be written a bit better.

6 Greater than 90 percent of the  
7 spectrum use is shared among multiple site-  
8 specific co-channel and adjacent channel  
9 incumbent wireless, so it's just describing  
10 the service.

11 MEMBER WARREN: Sure.

12 MEMBER EPSTEIN: And then the last  
13 sentence that Greg's mentioning, which I also  
14 think should be deleted, is: However, given  
15 the level of congestion, there is already an  
16 incentive level for incumbents and new  
17 applicants to seek new technologies that  
18 promote spectrum efficiency and which provide  
19 desired system feature sets.

20 CO-CHAIR TRAMONT: Wait, I'm  
21 sorry. Read it again, please? Sorry.

22 MEMBER EPSTEIN: In other words,

1 before, it ended: In this case it might be  
2 possible to use appropriate fees to promote  
3 more efficient technology.

4 And now there's an additional  
5 sentence added on, proposed to be added on,  
6 that says however, given the level of  
7 congestion, there is already an incentive  
8 level for incumbents and new applicants to  
9 seek new technologies that promote spectrum  
10 efficiency and which provide desired system  
11 feature sets.

12 MEMBER WARREN: So he doesn't edit  
13 the first sentence that says it might be  
14 possible, but just notes that there could be  
15 other incentives already in place.

16 CO-CHAIR HATFIELD: This is Dale.  
17 I have objections to that concluding sentence  
18 as well. I think it's just plain wrong.

19 MEMBER EPSTEIN: And also, we're  
20 not going into the pros and cons of fees for  
21 particular bands in this section. We're just  
22 noting examples of types of bands that are a

1 little bit different. So I think we could  
2 delete that sentence.

3 CO-CHAIR TRAMONT: And Mark, are  
4 you able to talk about your edits?

5 MEMBER CROSBY: Bryan, I'm on. I  
6 just can't seem to get on.

7 MEMBER WARREN: You're on now.

8 MEMBER CROSBY: I am?

9 CO-CHAIR TRAMONT: Yes. You're  
10 on.

11 MEMBER CROSBY: This is Mark  
12 Crosby. Delete the last sentence. Any edits  
13 from Dale Hatfield are certainly respected,  
14 and I take no umbrage at it.

15 There were some really broad  
16 generalities in this first, original draft,  
17 and I apologize for not getting edits to you  
18 sooner. I'm just trying to make it a little  
19 more -- clarify what the lay of the land is on  
20 the private land/mobile bands.

21 And it's not just 450 to 470. I  
22 mean, this is a phenomenon, maybe not for low

1 bands, but certainly 150 to 512. And I want  
2 to make it clear, I think somebody had in here  
3 clear spectrum. Are you kidding me? Clear  
4 spectrum? It's virtually impossible, as a  
5 certified committee, to identify clear. And  
6 I don't quite know how you're defining that.

7 If that is exclusive, oh my  
8 goodness. It's probably less than 5 percent of  
9 the frequencies in use, top 20 cities,  
10 available on an exclusive basis. So I'm just  
11 trying to make sure that what's in this is  
12 accurate. And obviously, I certainly would  
13 respect and welcome additional edits to make  
14 it better, of course.

15 CO-CHAIR HATFIELD: Yes, this is  
16 Dale again. I had no problem whatsoever with  
17 the first part, only the last sentence there.

18 MEMBER CROSBY: I couldn't help  
19 myself, Dale.

20 CO-CHAIR HATFIELD: I thought it  
21 was a little overgeneralized the other way.

22 CO-CHAIR TRAMONT: Thank you,

1 Mark. We should have opened up your  
2 microphone earlier. So we will delete the  
3 last sentence. We will maintain the edits to  
4 the first portion of that. And we now have a  
5 resolution of the unlicensed discussion.

6 So let's move on, if we can, to  
7 changes to pages five through -- I don't know  
8 how to chop it up, because there's no obvious  
9 breaking point here -- five through ten, the  
10 rest of the fees section.

11 Are there folks with specific  
12 proposed thematic or philosophical edits to  
13 those five pages?

14 MEMBER DONOVAN: This is Donovan.  
15 I have a question.

16 CO-CHAIR TRAMONT: Hello, David.

17 MEMBER DONOVAN: With respect to  
18 particularly, Mike, the way you described page  
19 seven, the third paragraph on the page,  
20 beginning with, there may be some differences  
21 in systems.

22 CO-CHAIR TRAMONT: I'm sorry, what

1 page are you on?

2 MEMBER DONOVAN: Page seven.

3 CO-CHAIR TRAMONT: Seven, okay.

4 MEMBER DONOVAN: There may be some  
5 differences in systems using spectrum for the  
6 first time, new acquisitions. And it went  
7 into the opportunity costs involved.

8 The paragraph is looking at, sort  
9 of, the opportunity costs of spectrum use  
10 immediately, because it's a substantial sunk  
11 investment in new networks and equipment that  
12 may be long-lived, which is dead spot-on.

13 What I didn't see here, and it's  
14 also reflected on page four, back when you're  
15 analyzing the megahertz as a market basis for  
16 assessing spectrum, is I didn't see the  
17 concept here about, in terms of assessing  
18 fees, assessing either the public good aspect  
19 of some spectrum uses, whether it's public  
20 safety, obviously from the broadcast  
21 perspective whether it's broadcasting.

22 From the government perspective,

1 maybe there's an imputed value for other uses,  
2 that is not necessarily measured. And so I'm  
3 trying to figure out how you all approach that  
4 in terms of recommendations for assessing  
5 spectrum fees, or whether that was beyond the  
6 scope, or whether or not we ought to have  
7 language in there saying it should be a  
8 consideration.

9 I know it may get tough, for  
10 example, in terms of military use of spectrum,  
11 because that does benefit all of us. But I  
12 assume that there are some sort of proxy  
13 analyses that can be done by economists to  
14 kind of, at least, try to take that concept  
15 into account.

16 And I didn't know whether it was  
17 embedded in the paragraph I just cited on page  
18 seven, or whether or not it is a concept that  
19 was just not discussed, or is viewed as being  
20 irrelevant here.

21 MEMBER ROSSTON: This is Greg.  
22 Let me at least take a first stab at this,

1       which I think -- obviously, the services that  
2       are provided are very important, and there are  
3       lots and lots of different valuable services  
4       that are provided using spectrum.

5                   MEMBER DONOVAN:   Right.

6                   MEMBER ROSSTON:   And they also not  
7       only require spectrum, but lots of other  
8       input.  People, capital, equipment,  
9       technology, all sorts of things.  And all of  
10      the other things that are used to provide  
11      these public goods are paid for in the market  
12      system.

13                   And this is the one input which is  
14      right now not part of the market system.  When  
15      you go to hire people to run the radios, you  
16      pay them wages, which they have an opportunity  
17      cost, and they get paid for that.

18                   And so the fact that it provides a  
19      public good or not doesn't mean you should  
20      then, therefore, not have to pay for producing  
21      it, because you need to get the inputs that  
22      are necessary in order to produce it.

1                   And so I think it is, in one  
2                   sense, mixing the inputs and outputs up in  
3                   this case. And these public goods are  
4                   important, they're extremely important to have  
5                   national defense and public safety. And we,  
6                   as a country, should pay for these things, and  
7                   put forth our ability to do that.

8                   And I think that's what this is  
9                   trying to reflect, that there is an  
10                  opportunity cost to providing these things,  
11                  and we need to know how much we should --  
12                  because we don't use all the spectrum for this  
13                  stuff, and somehow we're having to make a  
14                  decision as to how much spectrum we should use  
15                  for these things

16                  And this is one way of trying to  
17                  reflect what is the true cost of providing  
18                  these services, and whether we should provide  
19                  more or less of them.

20                  MEMBER CALABRESE: David, this is  
21                  Michael. The point -- just so that everybody  
22                  realizes, the point, David, that you're

1 generally making, although we had this debate  
2 at length, it is made at the top of page nine,  
3 the first of the bulleted -- it says fees  
4 should form but one part of any approach to  
5 spectrum reform.

6 And it quotes the National  
7 Broadband Plan, saying that a different  
8 approach to setting fees may be appropriate  
9 for different spectrum users. A fee system  
10 must avoid disrupting public safety, national  
11 defense, and other essential government  
12 services, et cetera.

13 So I think that was where we  
14 thought the point was made, but perhaps it's  
15 not strong enough for some folks.

16 MEMBER WARREN: Bryan, this is  
17 Jennifer.

18 CO-CHAIR TRAMONT: Yes, Ma'am.

19 MEMBER WARREN: Thank you. I  
20 mean, obviously we thought that those  
21 intangible factors were important. They came  
22 out where Michael showed. There's also, at

1 least, the recognition, though perhaps diluted  
2 a bit, at the top of page eight, also, that  
3 government services are a bit different.

4 Sorry, top of page seven. In the paragraph  
5 that begins, some subcommittee members.

6 And it's kind of buried in the  
7 U.K./AIP discussion. That said, I do think,  
8 and only because Greg brought it up, I do  
9 think there's a very big difference, and I  
10 won't spend much time on it, on an input that  
11 has no added value from any human input prior  
12 to its use by the government, which then adds  
13 the value.

14 Or like the commercial guys, when  
15 they add a value, it's not like a human, it's  
16 not like a building, it's not like a truck.  
17 It's a raw resource, that the added value  
18 comes after it. So it's not an input that  
19 incurs a cost like any of the other inputs  
20 that Greg cited.

21 So there is a distinction to be  
22 made between this. I'm not insistent on that

1 being reflected here, but the analogy that the  
2 economists often draw leaves out that factor,  
3 or at least we haven't discussed it in a way  
4 that I've understood it to be addressed.

5 Thank you.

6 MEMBER DONOVAN: Would it be  
7 appropriate, given then -- and I will defer,  
8 I don't want any further discussion, if you  
9 want to wait until perhaps maybe expanding the  
10 first paragraph on page nine? If that's where  
11 you believe it would be more appropriate,  
12 given that the text of the draft -- it didn't  
13 jump out at me there.

14 MEMBER WARREN: Right.

15 MEMBER DONOVAN: But if we could  
16 expand that discussion a little bit, I'd be  
17 more than happy to just proffer a sentence or  
18 two.

19 CO-CHAIR TRAMONT: And I'm sorry,  
20 what would the sentence or two say, David?

21 MEMBER DONOVAN: Well, I think  
22 what I want to read -- I want to read this, to

1 make sure. I mean, essentially what it's  
2 saying -- requires careful consideration --  
3 one size may not fit all. The National  
4 Broadband Plan recognized this factor, noting  
5 that a different approach to fees may be  
6 appropriate for different system users.

7 And just to expand that, because  
8 we talk about public safety, we talk about  
9 national defense and other government  
10 services. But there are actually other public  
11 good aspects of this, for example warning in  
12 the context of a sort of a 9/11 situation, or  
13 tornadoes, or things of that nature, which,  
14 quite candidly, my folks do quite well.

15 CO-CHAIR TRAMONT: The text here -  
16 - obviously, we're quoting the National  
17 Broadband Plan.

18 MEMBER DONOVAN: Understood. And  
19 so I would think that maybe a sentence --  
20 because that really does, in my opinion,  
21 affect, or should affect, or at least be  
22 considered, as to whether one is going to

1        assess spectrum fees or not, or the amount or  
2        level of those fees.

3                    And it's not just really sort of a  
4        market assessment of megahertz per pop,  
5        because you may be losing value that may have  
6        a sort of a public good aspect to it.

7                    MEMBER ROSSTON: This is Greg. I  
8        look at this very differently, which is I  
9        think -- I agree with you, these things are  
10       very valuable, that we need to worry about  
11       providing this kind of services, and that is  
12       something that should mean a willingness to  
13       pay for it.

14                   And therefore, if we set a price -  
15       - and by the way, this is money that would  
16       come from the government and go back to the  
17       government, we are setting a marker that says  
18       here is what we think this is worth.

19                   And if we say that public safety  
20       is so valuable, then we should be willing to  
21       put that money in or forego the revenues from  
22       allowing it to go to the commercial sector,

1 and therefore pay for it. It's not like we  
2 should set a low price for it for public  
3 safety, but we should realize that this is the  
4 opportunity cost that we are taking to pay for  
5 public safety.

6 And it's a very valuable service,  
7 and we are willing to forego that revenue from  
8 commercial services in order to provide this  
9 very valuable service. But that's on the  
10 willingness to pay side, not on the price  
11 side.

12 MEMBER WARREN: Actually, Greg --  
13 this is Jennifer. You highlighted something  
14 very interesting, which is that foregoing the  
15 opportunity for it to be sold to private  
16 sector is, in fact, a recognition of the value  
17 of it.

18 So foregoing those revenues  
19 already is an indication. So again, we can  
20 kind of go back to the heart of this, but  
21 again, in keeping with what Bryan was trying  
22 to do, which was put forward something that

1 reflects the considerations that need to be  
2 taken into account, I think what David is  
3 proposing is just to elaborate something that,  
4 I thought, had already been pointed to as  
5 where it would go by Michael.

6 CO-CHAIR TRAMONT: I guess, David,  
7 my only concern is that -- and maybe this is  
8 one that it's okay to have a proposal that we  
9 end up ultimately deciding it's either leading  
10 up to or finalizing in January.

11 All services, I think, would  
12 argue, maybe some less effectively than  
13 others, that they have off-setting public  
14 interest benefits that should be taken into  
15 account in fee-setting.

16 So PMRS will say: We have  
17 location-based services, and we have T911.  
18 And the people who do child-finding -- my only  
19 concern is that it can potentially be an  
20 infinite regression, and then as a policy  
21 matter it becomes very challenging.

22 So I think we took safety and

1 shelter in what the National Broadband Plan  
2 already did, in terms of the key factors. And  
3 I think you could argue, based on what's in  
4 there, that you're already subsumed within the  
5 discussion, because you wouldn't be disrupting  
6 public safety.

7 But if you have some language --

8 (Pause.)

9 -- this call, let's try to get it in by  
10 Friday. And if we can't get a consensus  
11 around it, then we'll flesh it out in January.

12 MEMBER DONOVAN: Fair enough.

13 CO-CHAIR TRAMONT: Okay. So --

14 PARTICIPANT: If I can make an  
15 observation, for the people who have not been  
16 on the subcommittee, the past five minutes is  
17 a very accurate summary of discussions that  
18 have gone at great length at the subcommittee  
19 level.

20 And the concerns about the public  
21 good nature of various activities have  
22 reflected a view that was expressed by David.

1 The economists' view, which is that there are  
2 inputs which have no inherent public good  
3 nature, and then there are outputs that may  
4 have inherent public good nature, and that  
5 that distinction needs to be understood  
6 clearly, is the position that Greg just  
7 stated.

8 These are not new and novel  
9 discussions. These have gone on at great  
10 length, and we've all -- those of us on the  
11 subcommittee have been through them many  
12 times. I just wanted to make that observation  
13 for the benefit of those not on the  
14 subcommittee.

15 CO-CHAIR TRAMONT: And for those  
16 of you on the subcommittee, to the extent that  
17 this feels like Groundhog Day, I apologize for  
18 rereading old ground. But I think it's  
19 important to get -- the nice part is, I think,  
20 it's the flavor of the extensive debates that  
21 went into it, and the amount of thoughtful  
22 dialogue that was engaged in by the committee

1 in coming to where we are today.

2 David, your edit was to page  
3 seven. Do other folks have changes prior to  
4 page ten, the end of the fees section?

5 (No response.)

6 CO-CHAIR TRAMONT: All right.  
7 Very good. Then we are going to move on to  
8 end the fees discussion. Unless anyone has  
9 anything else, we are going to move on to OMB  
10 Circular A-11. That section of the draft is  
11 relatively brief, two and a half pages. Do  
12 folks have proposed edits to the OMB Circular  
13 A-11 section?

14 MEMBER DONOVAN: I may have some  
15 minor stuff there, but that's --

16 CO-CHAIR TRAMONT: Okay.

17 MEMBER DONOVAN: It's right in the  
18 last paragraph under 33.4, where we begin to  
19 talk about must include in the development.  
20 This is to NTIA and the government, correct?

21 CO-CHAIR TRAMONT: Yes.

22 MEMBER DONOVAN: Okay. So budget

1       justifications for the procurement of major  
2       telecommunication, broadcast, radar --  
3       Shouldn't that just be communications and  
4       telecommunications, radar, and similar  
5       systems? I don't understand why broadcast,  
6       which is a commercial entity, is in there.

7                   CO-CHAIR TRAMONT: Did somebody -  
8       - I thought that some of this language was  
9       drawn directly from 33.4 Do people know?  
10      Michael, do you know?

11                   MEMBER CALABRESE: No, I don't  
12      know about that particular word.

13                   CO-CHAIR TRAMONT: Okay. We'll  
14      check that.

15                   MEMBER CALABRESE: Jennifer, are  
16      you still on?

17                   MEMBER WARREN: Yes, I'm still  
18      here. And I'm trying to remember. I know I  
19      didn't add categories in the drafting, so if  
20      it's not in there, it was added by another  
21      member of the subcommittee.

22                   But I just don't recall, David.

1 I'm sorry.

2 MEMBER DONOVAN: Okay. Fair  
3 enough.

4 MEMBER WARREN: We'll go back and  
5 locate it.

6 MEMBER DONOVAN: Again, it's not a  
7 huge thing.

8 MEMBER ZOLLER: This is Julie, and  
9 broadcast is in the existing text.

10 MEMBER WARREN: Okay.

11 CO-CHAIR TRAMONT: So I'd be  
12 inclined to keep it, David.

13 MEMBER DONOVAN: I stand down.

14 CO-CHAIR TRAMONT: Thank you,  
15 Julie.

16 MEMBER DONOVAN: Thank you.

17 CO-CHAIR TRAMONT: Other thoughts  
18 on the A-11 discussion?

19 MEMBER CALABRESE: I would just --  
20 this is Michael. I would just flag that we  
21 discussed, and there was some disagreement  
22 about, whether NTIA -- probably NTIA, although

1 it could conceivably be some other place in  
2 the government, should review what's reported  
3 by these agencies. In other words, should  
4 review the checklist and make some kind of  
5 analysis or recommendation to OMB, because OMB  
6 does not have the expertise, probably, to  
7 really second guess.

8 But there was no consensus, I  
9 think, about actually laying that  
10 responsibility at NTIA's doorstep, and instead  
11 we have the language that NTIA may also review  
12 this analysis during the assignment process.

13 In other words, they can take it  
14 into account with respect to the spectrum  
15 they're assigning, but they don't have a  
16 responsibility to make a recommendation to OMB  
17 about whether it actually makes sense or not.  
18 So I just wanted to flag that, because I think  
19 I was more on the side of giving it even more  
20 teeth.

21 MEMBER DONOVAN: Michael, would  
22 that apply to both commercial spectrum, or

1 just federal spectrum?

2 MEMBER CALABRESE: No, just  
3 federal.

4 CO-CHAIR TRAMONT: Okay. Anything  
5 else on OMB Circular A-11.

6 MR. GATTUSO: Joe Gattuso again, on  
7 my practical thing again. The recommendation  
8 is thrown out there without an actor. It  
9 would be helpful to know whether the committee  
10 wants us to advocate to OMB to make this  
11 change, or that this is a recommendation  
12 that's generally not applicable to NTIA, that  
13 this is something that will indirectly get to  
14 the OMB directive writers.

15 CO-CHAIR TRAMONT: The committee  
16 should -- I don't know if people feel  
17 differently, but I assumed our recommendation  
18 was that NTIA would recommend to OMB.

19 MR. GATTUSO: Right, and maybe the  
20 language could be put in the active voice to  
21 make that clear.

22 CO-CHAIR TRAMONT: Okay. Does

1 anyone disagree with that process?

2 (No response.)

3 PARTICIPANT: That's fine.

4 PARTICIPANT: I could do that in  
5 gathering changes.

6 MEMBER CALABRESE: I could help  
7 out on the offline edits part.

8 MR. GATTUSO: Thanks.

9 CO-CHAIR TRAMONT: All right.

10 Moving on from OMB Circular A-11 to the  
11 Spectrum Innovation Fund. This is pages 13  
12 through the end of the document, through 17.  
13 Edits to that section.

14 (No response.)

15 CO-CHAIR TRAMONT: Hearing none --  
16 wow. There has been a fair amount of jousting  
17 around that section prior to this version, so  
18 I hope, maybe, that the balance that's  
19 reflected in the current draft is sufficient  
20 for people to move on, unless someone wants to  
21 change their mind.

22 MR. GATTUSO: I always throw in my

1 last part. This is one section where the word  
2 recommend appears several places. It's not  
3 clear to me whether this section makes a  
4 single recommendation, as did the previous  
5 ones, or if there are multiple recommendations  
6 for NTIA.

7 CO-CHAIR TRAMONT: Joe, why don't  
8 we vow that, as part of the editing process on  
9 Friday, that Michael and I will take a look to  
10 make sure that the word recommend appears  
11 appropriately often, and that we are clear  
12 about what it is that we're recommending or  
13 not recommending.

14 MR. GATTUSO: All right.

15 CO-CHAIR TRAMONT: And we'll  
16 recirculate that to the group. I think we can  
17 do that without doing violence to anyone's  
18 intent here. I think --

19 MEMBER WARREN: Bryan?

20 CO-CHAIR TRAMONT: Yes?

21 MEMBER WARREN: I'm sorry, I just  
22 couldn't get off mute fast enough before you

1 started to conclude our comments. I  
2 apologize, but I do have one comment to make  
3 in this area, if I may?

4 CO-CHAIR TRAMONT: Sure.

5 MEMBER WARREN: An edit that was  
6 made, that is on page 17, where -- the first  
7 full paragraph: At the same time, the  
8 allowable uses, blah, blah, blah. I think we  
9 need to be careful on the conditioning of the  
10 agency's identification of spectrum capacity  
11 for being freed, quote/unquote, should its  
12 studies prove to be successful.

13 You know, sharing doesn't mean  
14 that it's freed. I'm not even sure what the  
15 term freed means, but it sounds as if that  
16 means able for reallocation to another use, as  
17 opposed to any other potential scenarios, such  
18 as sharing or new ways to maximize use by and  
19 among federal users, state/federal users, et  
20 cetera.

21 And so I think that needs to be  
22 toned down or clarified a little. And I'm

1 happy to provide a line edit, but I think I  
2 just wanted to flag that in case it was a  
3 major issue.

4 CO-CHAIR TRAMONT: It could be  
5 "made available for other uses," should the  
6 studies prove successful. Is that the  
7 sentiment?

8 MEMBER WARREN: It needs to be  
9 maybe made available for additional uses. But  
10 remember, if they apply some new innovative  
11 technology that allows greater use of adjacent  
12 bands for higher power by some -- let's say a  
13 commercial wireless system -- that should be  
14 a plus, if that means that a guard band can be  
15 significantly reduced.

16 I mean, there are lots of  
17 different things that I think would need to be  
18 looked at on an ad hoc basis, but I don't  
19 think that just being freed -- again, I need  
20 to work on a specific line edits, since I know  
21 we're not doing that on the call, but I wanted  
22 to flag that.

1 CO-CHAIR TRAMONT: It makes sense  
2 to me that the term freed might be value-laden  
3 than it needs to be for purposes of this  
4 sentence, so if you have alternative language,  
5 I think we should be able to find some  
6 consensus on this.

7 MEMBER WARREN: And I concur with  
8 the first lead-in sentence, which is to avoid  
9 the gold-plating. So there's no dissent on  
10 that.

11 MEMBER CALABRESE: This is  
12 Michael. Maybe it's something like, instead  
13 of freed, "used more efficiently" or  
14 "intensively." Something along those lines.

15 MEMBER WARREN: Yes, something  
16 along those lines. I'm sure we can work out  
17 some good language there.

18 CO-CHAIR TRAMONT: Okay. Anything  
19 else -- we'll look for that edit by Friday.  
20 Anything else that we should talk about in the  
21 last section, the Innovation Fund?

22 (No response.)

1 CO-CHAIR TRAMONT: Okay. Hearing  
2 none, then that concludes our discussion of  
3 the draft. We will implement the changes  
4 discussed, and we will look for folks' edits  
5 by Friday. We will assume that if you had  
6 substantive policy concerns they would have  
7 been raised on this call, so we assume that  
8 all of those have been discussed, and that  
9 what comes by Friday will be more in the  
10 nature of clean-up and clarifying edits.

11 So we'll look for those by Friday.  
12 With that, I also want to talk briefly about  
13 the unlicensed report, and then we'll throw it  
14 open for public comments. So this is a  
15 miscellaneous item that I'm putting slightly  
16 earlier.

17 We also have the draft from Gerry  
18 and Marty and his team on unlicensed. And I  
19 have not had a chance to talk to Gerry and  
20 Marty about this, but Gerry, I was going to  
21 propose, if it makes sense to you, to have  
22 folks similarly circulate to you line edits --

1 or edits, rather, by Friday. Not line edits.  
2 Edits by Friday, and then, I think, early next  
3 week, you as a committee co-chair, we need to  
4 decide whether there are larger issues than  
5 those line edits can resolve.

6 And if there are, we need to  
7 address them on the 13th. But I wanted to see  
8 if it makes sense to you to put a Friday  
9 deadline on edits to you.

10 MEMBER SALEMME: That would be a  
11 big help, so that would be great.

12 CO-CHAIR TRAMONT: Okay. So to be  
13 clear, that draft, which we talked about in  
14 the last meeting, did not clearly flag big  
15 philosophical issues in the same way that this  
16 one did. This one we've actually gotten  
17 further along on the unfinished draft than we,  
18 at this point, have on the unlicensed.

19 So for Friday's edits, the  
20 unlicensed, all edits are open. If you have  
21 philosophical concerns you should cite them in  
22 those edits, as well as line edits. And then

1 Gerry will assess what we are doing from  
2 there, and whether we need to have some sort  
3 of -- how we best should address that report  
4 at the January 11th meeting.

5           Okay? So be sure to get your  
6 stuff into Gerry, consistent with our original  
7 report deadline -- so we're going to try for  
8 Friday, and then the original schedule we had  
9 agreed to was that there would be final line  
10 edits coming around on the 22nd, which is a  
11 Wednesday. So we're going to move that  
12 slightly up, if people can accommodate it.

13           (Off-phone comment.)

14           CO-CHAIR TRAMONT: Oh, you're  
15 going to flip it back. I'm sorry, I'm being  
16 coached here. So Gerry, does that make sense,  
17 that you can then circulate a revised draft on  
18 the 22nd that attempts to accommodate  
19 everyone, and then we will address that draft  
20 at the January 11th final meeting?

21           MEMBER SALEMME: That sounds  
22 great. I'll try to get it out a little sooner

1 than that, so if we can get the comments in,  
2 I can work over the weekend.

3 CO-CHAIR TRAMONT: Okay. So --

4 MEMBER COOPER: Can I ask you for  
5 just a slight change? Since Friday really  
6 means Friday evening, can we make it Sunday  
7 evening?

8 CO-CHAIR TRAMONT: I will defer to  
9 Gerry, who will be most pinched by that delay.

10 MEMBER SALEMME: That would just  
11 make it harder, Marty, on the back end, for  
12 the 22nd. So if we could try to have Friday,  
13 then we can work on the weekend to get it out  
14 at the beginning of the week.

15 Just with the holiday coming, I  
16 presume people really won't look at it much if  
17 we don't get it out to them by the 22nd. But  
18 you know, Marty, we'll be working together  
19 anyway. We'll be working over the weekend  
20 with it.

21 MEMBER COOPER: That's fine.

22 MEMBER SALEMME: Why don't we

1 still leave Friday as a target, end of the day  
2 Friday, as the target, if you don't mind.

3 PARTICIPANT: Is that Gerry?

4 MEMBER CALABRESE: Yes, Michael.

5 One suggestion along those lines, that Marty  
6 said, is that perhaps in between the 18th and  
7 the 22nd you could recirculate your  
8 synthesized, your new version, just with the  
9 subcommittee at least. And then we could give  
10 you some feedback ahead of the 22nd.

11 MEMBER SALEMME: Perfect.

12 CO-CHAIR TRAMONT: Any other  
13 thoughts, or any comments on the process we're  
14 engaged in on the unlicensed support?

15 (No response.)

16 CO-CHAIR TRAMONT: Okay. Thank  
17 you. And thank you to the unlicensed  
18 committee for all their hard work. At this  
19 point, we're going to open it up to public  
20 participation and comment.

21 If you would like to participate,  
22 you can push Star 0, and I believe the

1 operator will be able to turn up your mic. So  
2 I believe at this point we'll open it up for  
3 public comment.

4 I believe the operator also said  
5 that you could push Star 1 to be in the queue.

6 THE OPERATOR: Yes. Star 1, and  
7 record your name to ask a question. And we do  
8 have one from Jim Snider. Your line is open.

9 MR. SNIDER: Yes. This is Jim  
10 Snider. I think you all know who I am. First  
11 of all, I'd like to -- am I on? Can you hear  
12 me?

13 CO-CHAIR TRAMONT: We can.

14 MR. SNIDER: Great. So first of  
15 all, I'd like to applaud Larry Strickling and  
16 the other NTIA officials for complying with  
17 the law and holding this meeting publically.  
18 I think that's very admirable. I would ask  
19 that you ask for a legal opinion from Mary  
20 Smith as to whether you need -- for all the  
21 distribution of comments to the committee,  
22 whether those are public documents are not.

1 I don't know the federal laws so  
2 well. I do know, when I hold meetings  
3 locally, in a duly designated public meeting  
4 for a public body, that information would have  
5 to be public. So far, that correspondence has  
6 not been published, so I'm assuming right now  
7 you're treating that type of correspondence as  
8 non-public.

9 But I think you should get a legal  
10 opinion to clarify that. You may already  
11 know. And just a few other items. As of  
12 midnight last night, the incentives report was  
13 not published on the website. The principle  
14 on open government -- I'm not saying that this  
15 is illegal, I'm just saying that the idea is  
16 that outsiders should have access to relevant  
17 public documents and information at the same  
18 time as insiders.

19 So previously I requested that  
20 notice of meetings go to outsiders at the same  
21 time as insiders. The same principle applies  
22 to documents. It's a great burden on the

1 public when you can't get copies of the  
2 documents until the morning of the event. It  
3 was posted this morning, but it was not posted  
4 previously.

5           There's a little bit of a double  
6 standard. For example, if you look at the  
7 notice for this meeting, it says that public  
8 comments should be gotten into you by December  
9 8th, that was last Wednesday, so that you'll  
10 have time to review the documents, and they're  
11 distributed to you.

12           Now, I don't know how many people  
13 distributed documents by December 8th, but  
14 also I didn't receive copies of those  
15 documents, and they're not online. And I'm  
16 not sure if the plan is to post them online,  
17 but I believe all that information is public,  
18 and I would encourage you, because this is now  
19 a long pattern of posting documents at the  
20 last second, which is very inconvenient for  
21 members of the public.

22           And then, on the notice, it says

1 that the documents that are specifically  
2 mentioned are the agendas, minutes, and  
3 reports. Not mentioned are the transcripts  
4 and webcasts. And sure enough, they're not  
5 posted online, and they haven't been for the  
6 last few meetings. And the worry is that the  
7 NTIA and CSMAC will regress to the old  
8 standard of just agendas, minutes, and  
9 reports.

10 I would like to be able to have  
11 access to the transcripts, for example. I  
12 believe the intention is to make those  
13 available. It's now five weeks since the last  
14 meeting, and they're not. And there's no  
15 indication that the webcast will be made  
16 available online. They haven't been, and many  
17 of them have been missed.

18 So I'd like that to be part of the  
19 record in the future, that those are part of  
20 the public record for a meeting, and language  
21 on future notices to clarify that that's the  
22 intent. Otherwise, I'll assume that they may

1 or may not be followed, which has actually  
2 been the practice in recent months.

3 And then the last item is, when  
4 you call up you have to give your name. And  
5 the general principle is the public should be  
6 able to participate anonymously in meetings,  
7 and here it's sort of reversed. I have to  
8 give my name, but there's no public  
9 distribution of who the public participants  
10 are.

11 So it's another one of these cases  
12 of asymmetric information. I would recommend  
13 that callers do not have to identify  
14 themselves, but if they do, that information  
15 should be available to the public as well as  
16 to the folks at NTIA.

17 So those are my few comments on  
18 the theme of how to make the committee more  
19 transparent, very much consistent with the  
20 President's open government directive, and  
21 Larry Strickling has repeated comments that he  
22 wants NTIA, and CSMAC in particular, to be as

1 transparent as possible, based on the modern  
2 standards of transparency.

3 So with that, those are my  
4 comments. If there are any questions, I would  
5 be happy to answer them.

6 CO-CHAIR TRAMONT: Great. Thank  
7 you, Jim. As always, we try to be responsive  
8 and improve our performance each time, and  
9 we'll do that again. We'll look into the  
10 issues that you have raised.

11 Other public comments?

12 THE OPERATOR: We have no other  
13 comments at this time.

14 CO-CHAIR TRAMONT: Very good.  
15 Then at this point, I believe, if there are  
16 any comments from the committee, for the good  
17 of the order?

18 (No response.)

19 CO-CHAIR TRAMONT: Okay. Very  
20 good. Hearing none, we are adjourned until  
21 January the 11th, 2011, which is daunting.  
22 That's the first time I've said it out loud.

1       So 1/11/11, we will see you at the Commerce  
2       Department at 9:00 a.m. on the 11th. Thank  
3       you all very much for your time, and we  
4       appreciate your joining by teleconference.

5                       (Whereupon, the above-entitled  
6       meeting went off the record at 12:29 p.m.)

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C E R T I F I C A T E

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In the matter of: Commerce Spectrum Management  
Advisory Committee Meeting

Before: NTIA

Date: 12-13-10

Place: (telephone conference)

was duly recorded and accurately transcribed under  
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