

TESTIMONY

Of

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Chairman

Federal Communications Commission

Before the

**Subcommittee on Commerce, Justice, State, and the Judiciary
of the Committee on Appropriations
United States House of Representatives**

On the

**Federal Communications Commission's
Fiscal Year 2003 Budget Estimates**

Wednesday, April 17, 2002

SUMMARY OF TESTIMONY OF FCC CHAIRMAN MICHAEL K. POWELL

April 17, 2002

The Federal Communications Commission ("FCC") continues its efforts to implement a long-term business plan designed to make it a more responsive, efficient and effective agency, capable of facing the technological and economic opportunities and challenges of the new millennium. As always, the Commission's efforts are guided by its commitment to protect consumer welfare and the public interest.

To effectuate its goals, the FCC has requested \$278,092,000 and 1,975 FTEs for Fiscal Year 2003. This request includes \$9,765,000 to fund the Administration's government-wide proposal to fully fund retirement costs in each agency's budget. The Commission's requested operating costs are \$268,327,000.

The FCC has demonstrated during the past calendar year a commitment to its regulatory purpose. The fundamental mission of the FCC is to implement the Communications Act of 1934, as amended, in a manner that promotes competition, innovation, deregulation, and the availability of high-quality communications services for all Americans.

The Fiscal Year 2002 funds have been, and are continuing to be, used to fund critical infrastructure improvements, especially related to the FCC's information technology needs, and to improving consumer services and reducing regulatory backlogs. The FCC also has dedicated resources to improving its workforce, hiring more engineers, training staff, and providing incentives for talented staff to remain for longer periods of time and serve the public interest. During the past year, the Commission began improvements at the Columbia, Maryland Laboratory facility to upgrade its testing capabilities and install trained personnel to facilitate this process. Most importantly, the FCC has completed a complete self-examination, developed a restructuring plan, and is poised to begin the process of implementing critical reorganization changes.

On January 17, 2002, the FCC sent the cornerstone of its improvement plan to this Committee—a Section 605 Report detailing the reorganization of the Commission. After approval, we began the implementation of the reorganization this past month. The reorganization is more than just a retooling of an old agency—it represents an important step in streamlining the FCC. It is built along four important concepts: (1) a clear substantive policy vision; (2) a pointed emphasis on management; (3) an extensive training and development program; and (4) organizational restructuring.

The FCC has articulated specific areas for policy-making emphasis: broadband deployment, competition policy, spectrum policy, building a foundation for media ownership regulation, digital television transition and homeland security. The Commission's policy emphasis also has a new sense of purpose since September 11, 2001. Everyone has seen the critical importance of a healthy and competitive communications system—both in times of national crisis, and in times of peace. With the funds requested for Fiscal Year 2003, the FCC will continue its important work in ensuring a dynamic regulatory environment that facilitates the development and deployment of new technologies and services for all Americans.

Mr. Chairman, Ranking Minority Member, and Members of the Subcommittee, I appreciate this opportunity to appear before you today to provide you with a report of our work conducted during the past calendar year and to discuss the Federal Communications Commission's ("FCC") Fiscal Year 2003 Budget.

Last year, I appeared before this Subcommittee for the first time and made a personal commitment to effectuate fundamental change within the Commission. I guaranteed that the Commission, as an institution, would complete a thorough self-examination and develop a reform plan designed to make the FCC a more responsive, efficient and effective agency, capable of facing the technological and economic opportunities and challenges of the new millennium. The Commission delivered on this promise and sent you a reprogramming request for its reorganization six months later. We appreciate your rapid consent to our request, and we began the implementation of our reorganization plan last month.

I also pledged to enhance the Commission's independent technical and engineering expertise. The Commission dedicated resources to recruiting, training and retaining a solid technology-oriented workforce under our "Excellence in Engineering" Program. We have hired 24 mid- and senior-level and 15 entry-level engineers. We instituted training programs to keep current and future engineers up to date in their profession. And, we have improved the environment for engineers by purchasing equipment to facilitate the spectrum management process, and to upgrade the Columbia, Maryland Laboratory's testing capabilities. Our on-going efforts in this regard, coupled with the Agency's "FCC University" and "Excellence in Economic

Analysis" initiatives, hopefully will preserve our existing wealth of FCC staff knowledge and expertise and enhance and extend that collective knowledge well into the new millennium.

When I last appeared before this Subcommittee, I pledged to make the Commission a model of solid management techniques and performance. As such, the Commission moved forward to continue to streamline agency processes and procedures, automate agency processes, provide improved access to agency information, and modernize its information technology infrastructure. During our January 2002 Open Agenda Meeting, the Commission's staff delivered presentations which demonstrated substantial improvement in backlog reduction levels and other management benchmarks.

Finally, I also vowed that the Commission would use the remainder of its Fiscal Year 2001 and expected Fiscal Year 2002 funds to implement its statutory mandates and serve as a constructive and fair independent agency, cognizant of the intent of Congress and dedicated to serving the public interest and consumer welfare. I am confident that the Commission has met all of these commitments and, in doing so, has raised its standards for serving the public.

The Commission has made these achievements, however, against the backdrop of tragic and dramatic national events. The events of September 11, 2001, provided us all with an important lesson in the significance of the FCC's portfolio. We know now that our society has developed more than just an appetite for communications services—America is dependent upon these services in times of crisis and in times of peace. A strong and competitive communications

network is essential to a healthy economy and our nation depends on both, whether to bolster its ability to defend itself, or to communicate in times of normalcy.

For Fiscal Year 2003, the Commission is requesting \$278,092,000, of which \$268,327,000 will be dedicated toward our operational requirements. Although we did not receive full funding for our FY2002 programs, we are appreciative of this Subcommittee's attention to our needs and your recognition of the importance of our programming. Last year's appropriation was an important first step in ensuring adequate funding for the Commission, and we hope that you will agree that our FY2003 funding request is critical to accomplishing our statutory mandates.

This year, you have my personal pledge to continue driving forward in a patient and deliberate manner—to handle the expected and the unexpected; from homeland and internal security to biennial reviews, an expected heavy influx of Section 271 long-distance applications, and pending major merger reviews, just to name a few. The Commission intends to use its expected funding to continue its campaign to upgrade the Agency's facilities, as well as to initiate and complete critical rulemakings. The present request is the minimum amount necessary to continue to capitalize on our past successes and to carry us through the immense challenges of the next fiscal year. Already, Fiscal Year 2002 has been marked by a tidal wave of new policy and regulatory challenges. I expect Fiscal Year 2003 to be at least as opportune and challenging.

FISCAL YEAR 2002: MAXIMIZING AVAILABLE RESOURCES

At the beginning of the last century, innovations and improvements in telecommunications services took years, and sometimes decades. Today, we develop new communications products and services at a more rapid speed than ever before, in an exponential fashion that makes science fiction a matter of science fact within just a handful of years. Looking forward, that makes for policy and management opportunities, as well as hurdles and challenges.

As a consequence, the Commission continues to capitalize on its well-established core competencies, especially honed over the past six years, to eliminate barriers to entry in domestic communications markets; to deregulate where appropriate to promote competition; to vigorously enforce Commission rules so that corporate entities compete fairly; and, to promote competition in international communications markets. Moreover, the Commission continues to build upon the cornerstone principles of the public interest and general consumer welfare to promote access to communications services for all Americans, and to promote heightened consumer education and information.

The Commission must stay abreast of technological advances and be prepared to face the future before the future arrives. To do so, the Commission needs funding to improve its use of internal technology and to develop a highly trained workforce to evaluate communications industry trends. Last year when I appeared before you, I discussed the Commission's critical need to upgrade its infrastructure. I also emphasized our efforts to re-evaluate the Agency and develop a business plan to reform its organizational structure. A well-funded infrastructure and

an efficient organizational structure are intrinsically linked. The overall ability of the Commission to function as an institution is dependent upon the quality of both. When I last testified, we already had made strides toward upgrading information technology and technological resources. Less than a year after my testimony, I sent you a report outlining a significant internal reorganization of the Commission.

The foundation for the Commission's reorganization rests on the shoulders of its staff—a diverse and committed group of people dedicated to utilizing resources to maximum capacity and rebuilding a trim, well-focused organization that meets the needs of America's communications industries and their consumers. The reform and reorganization of the Commission is built along four specific concepts: (1) a clear substantive policy vision; (2) a pointed emphasis on management; (3) an extensive training and development program; and (4) organizational restructuring. The implementation of each of these concepts exemplifies how the Commission utilized its financial resources during the past year, and explains our plans for additional funding in Fiscal Year 2003.

A Clear Policy Vision

I enumerated above a set of policy and management imperatives that will extend the Commission's mission, evolve its operational strategies, and drive further the culture of efficient, effective and responsive performance. First, we articulated a clear policy vision. The Commission's staff also evaluated our activities in these identified issue areas and tied the highlighted policies to the reform of the Commission as an institution. We initially specified several areas for policy-making emphasis: broadband deployment, competition policy, spectrum

policy, building a foundation for media ownership regulation, digital television transition, and homeland security. Although these issues sometimes overlap, their individual significance guides our dedication of resources in the regulatory arena.

Broadband

Recently, I noted that one of the FCC's central policymaking objectives is, and should be, the promotion of efficient, widespread deployment of broadband infrastructure. Recognizing the importance of broadband deployment—a topic of conversation that is extensively discussed here on Capitol Hill, as well as at the Commission, Wall Street, and Main Street—the Commission is taking a concerted, comprehensive approach to bringing regulatory clarity to what is, at best, a murky and confusing policy area. To that end, the Commission has committed significant resources to initiate and consider several proceedings that pointedly address broadband issues. Of course, our actions in this area will be grounded first and foremost in the Act, taking into account the statutory objectives of competition, universal service, and consumer protection.

It is important to emphasize that while we have committed significant resources to initiating or completing various rulemakings, the legal and regulatory issues implicated here have yet to be resolved. But they must be resolved if we collectively intend to facilitate the ubiquitous availability of broadband to all Americans. The Commission welcomes the input of all Americans in our deliberative process—including the opinions of the Members of this Subcommittee and Congress as a whole—as we proceed in developing a regulatory framework for successful broadband deployment.

Competition Policy

Competition is a fundamental and guiding statutory principle under the Telecommunications Act of 1996. It is the root from which most of our policy grows. The Commission has been outspoken in its support for competition, both inter- and intra-modal. More significantly, however, our actions have backed up our words. We recognized that ensuring that competitors have access to those network elements that are necessary to provide competing telecommunications services is only half the battle as the competitive local exchange carrier ("CLEC") community told us that to be useful, network elements must be provisioned in a timely manner. In response to these provisioning concerns, we launched two Notice of Proposed Rulemakings on proceedings on performance standards that began an effort to simplify performance levels and standards to both clarify obligations and to allow for a mechanism for swift enforcement when those levels and standards are compromised. The Commission has also begun a second analytical look at the regulatory implementation of the Act, through our Triennial Review of Unbundled Network Elements Requirements NPRM, that takes account of market experiences to determine which of our regulations are working to provide a competitive environment for consumers and which are not.

Positive rules to promote competitive entry are meaningless without a credible enforcement effort. Therefore, we have made enforcement a cornerstone of our competition policy. As you will recall, last year we called on Congress to increase dramatically the forfeiture amount allowed under the statute. We eagerly await the fulfillment of this request, and we continue to enforce vigorously our current rules that serve to promote competition. Indeed, we have been diligent in our enforcement efforts, imposing major fines on Bell operating companies

for local competition failures, and augmenting our enforcement staff with top flight litigators.

Moreover, the Commission remains vigilant in its review of Section 271 applications. Since 2001, despite the fact that the roadmap for Section 271 approval was drawn, three Section 271 applications involving four states were withdrawn (and subsequently re-filed), demonstrating the Commission's continued determination in ensuring the competitive checklist is met and local markets are open for competition.

Spectrum Policy

The Commission's first assigned task in 1934 was to manage the spectrum. The same basic principles articulated then continue to exist today. The Commission has an obligation to ensure that spectrum, an important and precious resource, is used wisely, ensuring the broadest public benefit and satisfying urgent public safety needs.

The Commission has acted decisively—utilizing our staff and the spectrum auctions process to follow Congress' mandate that we work toward the rapid deployment of spectrum. During the past few months, we have reallocated the spectrum used for channels 52-59, designated the 4.9 GHz band for public safety purposes, and authorized the use of spectrum for Ultra-Wideband technology. In a major rulemaking completed on December 28, 2001, the Commission reallocated 27 MHz of spectrum transferred from the Federal Government. This spectrum will permit the initiation of new and flexible services—for example, in the fixed satellite service, fixed mobile service, telemetry, and low power radio. In addition, the

Commission has experimented with innovative methods for licensing that encourage private band management within the confines of existing statutory guidelines.

Media Ownership Foundation

The time has come to rebuild the factual foundations that support a contemporary regulatory regime for media ownership regulations. Although the media landscape has changed dramatically since the initiation of many of the Commission's ownership regulations, the long-standing goals of diversity, competition, and localism remain paramount.

As you are aware, the U.S. Court of Appeals for the D.C. Circuit recently vacated some of the Commission's broadcast ownership rules, and has remanded others for our reconsideration. At the heart of the court's concern is the ability of the Commission to justify these restrictions in light of the dynamic changes in today's marketplace.

Long before the recent court decision, however, I expressed concern about the quality of the record the Commission relied on in reaching media ownership decisions. In an effort to shore up this area, I announced the creation of a Media Ownership Working Group on October 29, 2001. This working group is tasked with developing a solid factual and analytical foundation for media ownership regulation. Moreover, they are working to provide an empirical and analytical basis for the Commission to ensure that our regulatory regime in this area actually serves the goals of diversity, localism, and competition in the media marketplace.

It is important to note, however, that the D.C. Circuit's recent decision found that the Act compels the Commission to review its media ownership regulations every two years and to repeal these regulations unless the Commission makes an affirmative finding that the rules are necessary to serve the public interest. To address the court's criticism that we lack a factual foundation for our ownership rules, we must expend a meaningful amount of resources to improve the evidence before us. We cannot afford to sit back and hope the public submits all the information we need to make good decisions. We must be proactive in deciding what questions need to be answered, and then to go out and answer them. That is what I have set up the Media Ownership Working Group to do.

We then need to apply those factual findings to our media ownership rules and determine if the rules as written truly promote competition, diversity and localism, or whether today's media market requires different approaches. I welcome that challenge, but must emphasize that overhauling our knowledge base on media ownership and then re-initializing it every two years hence will require a significant commitment of resources.

In addition to appointing specific FCC personnel to gather empirical information, the Commission has launched a comprehensive examination of rules on multiple ownership of local radio stations and set interim policies to resolve pending radio transfer applications. The Commission also, as recommended by the prior Commission, initiated a proceeding to review the newspaper-broadcast cross-ownership rule. The Commission also began a rulemaking on cable ownership rules last year. In addition, the Commission has proposed new equal employment opportunity rules for broadcast and cable. I believe that by next year, with the

proper allocation of resources within the Commission, I will be able to report on significant beneficial progress in this area.

Digital Television Transition

While broadband deployment and the inherent competitive issues involved rank as the most important communications issues facing America, the economic by-products of digital television ("DTV") are equally important in scope and stature. Television is, after all, a central part of our society and provides our citizenry with essential information and entertainment.

Consequently, the DTV transition and its economic and regulatory implications maintain an important place in the Commission's overall policy-making efforts. In October 2001, I announced the creation of a Digital Television Task Force. This task force has been reviewing the ongoing transition to DTV, making recommendations to the Commission regarding transition priorities, and facilitating discussions among the various parties. Earlier this month, with the task force's assistance, I released a plan seeking voluntary commitments from the major relevant industries to move the transition forward. The plan is designed to avoid the finger-pointing that often characterizes this debate by asking all of the affected industries to accept an equitable share of the burden. While the voluntary plan is not a comprehensive solution to all of the difficult issues raised by the transition to DTV, I am hopeful that, if adopted by the industries involved, it can provide a real boost to the transition in the coming months.

Homeland Security

In response to the events of September 11, 2001, the Commission established a Homeland Security Policy Council ("HSPC"). The formation of the HSPC and its work involves the use of significant resources in an area that we did not consider for budgetary purposes during the Fiscal Year 2002 appropriations process. Like other agencies, we are using our current pool of Full-Time Employees ("FTEs") to cope with the events of September 11, 2001, and we are demanding more of them in handling their regular workload along with new tasks.

HSPC is assigned to handle overlapping security issues and respond to specific mission objectives. First, the mission of this group is to assist the Commission in evaluating and strengthening measures for protecting U.S. telecommunications, broadcast and other communications infrastructure and facilities from further terrorist attacks. Second, HSPC assists the Commission in ensuring rapid restoration of U.S. telecommunications, broadcast, and other communications infrastructure and facilities after disruption by a terrorist threat or attack. Third, HSPC assists the Commission in ensuring that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States.

Emphasis on Management

As an outgrowth of the Commission's self-examination and reform, the Commission has placed a new emphasis on the management of available resources and the creation of tools designed to enhance the operation of the bureaus. We asked all managers to review their internal processes and develop real solutions to existing problems. Specified management initiatives

include: (1) backlog reduction; (2) better use of technology, including a re-designed Internet site; (3) improved productivity; and (4) consolidated and simplified licensing systems.

At our January 2002 Open Agenda Meeting, most Bureau and Office Chiefs reported on their reduction in regulatory backlogs—a matter that has dogged the Commission. We have posted these statistics on the Commission's Internet site (<http://www.fcc.gov>), so that our progress in this area is evident to the industry. One major highlight in this area is the Wireless Telecommunications Bureau. In 1998, they had a 13.12 percent backlog of applications pending for more than a year. By December 2001, that percentage had dropped to 0.24 percent. Likewise, the International Bureau managed to achieve a 55 percent reduction in pending applications for Review and Petitions for Reconsideration, as well as a 56 percent reduction in the number of existing non-routine applications and a 25 percent reduction in existing satellite space station applications.

This past year, the Commission's management maximized improved information technology resources to increase responsiveness to consumers. The FCC's redesigned Internet site is part of our management plan to make the Agency more responsive and transparent. We average approximately 265,000 hits on a daily basis, and we were ranked third overall among federal agencies for Internet site design. At the end of November 2001, the Commission launched a new FCC search engine to improve its Internet site.

In addition to a general managerial emphasis on outreach, the Commission's staff leadership is tasked with improving bureau productivity. For instance, the Commission

instituted comprehensive accounting and reporting reform for incumbent local exchange carriers. And, in an effort to reach out to our core constituencies, the bureaus have all undertaken efforts designed to consolidate and simplify licensing systems. The Commission has proposed new procedures to increase the efficiency of satellite licensing procedures. The Commission also has proposed a uniform system for filing informal complaints. This particular change would promote efficiency and predictability for consumers and service providers.

Training and Development

The Commission's long-term policy objectives require a highly trained staff capable of adapting to technological change and industry trends. Accordingly, the Commission has instituted a range of training and technical initiatives: (1) the "FCC University"; (2) the "Excellence in Engineering" Program to recruit engineers and improve their physical resources; and (3) recruitment and retainment of economic experts, or the so-called "Excellence in Economic Analysis" Program.

Already we have instituted internal training programs in a variety of areas and brought outside experts in to train our staff in various disciplines. The most successful element of this program so far, however, is the FCC's "Excellence in Engineering" Program, initiated during the previous fiscal year and continued with funds in our Fiscal Year 2002 appropriation. Already we have hired 24 mid- and senior-level and 15 entry-level engineers in open FTE positions. We have instituted a special training program to educate and retain our technological experts. We have dedicated a substantial portion of our funding to improving the physical infrastructure used by the engineers for testing and other purposes. At the Columbia, Maryland Laboratory, we have

purchased five new spectrum analyzers and three new signal generators to enhance our ability to adequately measure emissions. As a result of these improvements, we now have the capability to take measurements at 110 GHz instead of the outdated 30 GHz level. We also have dedicated financial resources toward the purchase of equipment designed to measure cellular phone radiation.

Restructuring

Although managerial goals and engineering equipment are essential components of an efficient agency dedicated to high-tech matters, the key to ensuring a well-functioning agency is to create an organizational backdrop that maximizes human and technological resources. On January 17, 2002, the Commission sent the cornerstone of its improvement plan to this Committee—a Section 605 Report detailing the reorganization of the Commission. This past month, we began implementing that reorganization. The Commission's plan is more than a simple retooling of an old agency—it represents an important step in streamlining the Commission. Although there will be no initial budgetary impact from the restructuring, we expect that in years to come, the streamlining approach taken here will pay dividends in efficiency and good management. I have attached to my written testimony a copy of the newly designed organizational chart for the Commission.

We intend to dedicate the bulk of our human resources to continue to move forward in these areas, to make the Agency responsive to consumer and industry demands and to facilitate telecommunications growth and deployment. The best way to accomplish this goal is to ensure adequate funding to purchase necessary equipment, improve our information technology

capabilities, and hire and retain trained technical personnel capable of assisting the Commission in its decision-making process.

FISCAL YEAR 2003: CONTINUING A YEAR OF PROGRESS

It is important to note that all of the reform and restructuring efforts started in Fiscal Year 2001 continue to be limited by the available discretionary funding in Fiscal Year 2002.

Currently, 69 percent of the Fiscal Year 2002 appropriation is earmarked for salaries and benefits. Additionally, 29 percent will cover non-discretionary cost increases related to rent and supplies. That amount leaves the Commission with two percent of its total appropriation to implement reform – streamline operations, enhance technical and economic expertise, oversee spectrum management, and provide funds for resolution of ongoing enforcement issues such as cramming and slamming. For this reason, focussing on improving the funding picture in the future—*i.e.*, Fiscal Year 2003—is especially important.

The \$268,327,000 in operational costs requested by the Commission for Fiscal Year 2003 is the bare minimum needed to allow us to continue the progress made during the past year. In order to achieve our goals, and stay abreast of telecommunications developments, the Commission must keep ahead of changes in technology, economics, and the law. Accordingly, we are requesting \$15,066,000 for critical programmatic initiatives. An additional \$8,190,000 would be dedicated toward uncontrollable cost increases related to salaries, benefits, and inflationary cost increases for rent and supplies. The Administration's request of \$9,765,000 for retirement costs brings the total Commission Fiscal Year 2003 budget to \$278,092,000. The Fiscal Year 2003 regulatory fee offset for the Commission would be 89 percent of the proposed

Fiscal Year 2003 budget, making our direct appropriation request from this Committee 9.5 percent over our total fiscal year budget, or 13.5 percent with the pension costs included.

From the perspective of funding Commission objectives, the critical segment of the overall budget is the \$15,066,000 dedicated to programmatic initiatives. Of that amount, \$4,986,000 will be dedicated toward Commission employee training, enforcement, and spectrum management initiatives. Due to national security needs identified since September 11, 2001, the Commission also will spend \$1,000,000 to improve internal security and support other security efforts. The remainder of these funds, \$9,080,000, will improve information technology critical to supporting program performance initiatives. With these funds, the Commission will improve existing systems to ensure compliance with Government-wide standards pertaining to system security, accessibility, and financial management.

In addition to the policy objectives and reform outlined in my testimony, our specific objectives for this funding include:

- Continued expansion of electronic filing and other initiatives to enhance public access and expedite Commission policy decision-making;
- Improved technical and economic expertise of staff;
- Life-cycle replacement of technical monitoring and testing equipment;
- Ongoing infrastructure improvements to Columbia laboratory facility;
- Expeditious and effective response to public requests for assistance and information;
- Enhancement of information technology infrastructure to make it responsive to changes in the industry; and,
- Enable the FCC to improve its homeland security posture.

One of the Commission's main objectives during the next year is to maintain a safe and secure working environment for the FCC's employees and visitors who frequent the Commission. As with most other agencies, the Commission has faced the fallout from

September 11, 2001, with unanticipated costs. This year we must provide enhancements to a variety of activities and programs, including on-site physical security; relocation and processing of mail at multiple off-site locations; and systems upgrades to ensure that our information technology infrastructure has adequate cyber-security safeguards. Although we have \$1,000,000 specifically set-aside for these projects in Fiscal Year 2003, the Commission also has requested the use of excess regulatory fees collected in previous years for Fiscal Year 2002 security needs. In addition to receiving full funding, we would appreciate a favorable decision related to this request.

Without adequate support, we will be required to eliminate some of the Commission's programmatic initiatives, or cut back on the implementation of individual programs. I believe that I already have made the hard choices necessary to operate the Commission on as tight a budget as practicable. As I outlined in the first part of my testimony, the infrastructure and manpower initiatives are interconnected to the general health of the agency and the completion of its core mission.

CONCLUSION

I respectfully request that this Subcommittee grant the Commission its full funding request for Fiscal Year 2003.

Thank you. I would be happy to answer any questions this Subcommittee may have.