

The Honorable Mignon Clyburn  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

### **Additional Questions for the Record**

#### **The Honorable Greg Walden**

**1. I understand that Ethernet and fiber services are better, faster technologies rapidly displacing demand for special access services. A recent analyst report points out that there are many Ethernet providers, and cable companies are major competitors. Time Warner Cable, Comcast and Cox are three of the top seven Ethernet providers – and they specifically market their services as replacements for special access. Doesn't this demonstrate a healthy, competitive market?**

Thank you for the question. I have been advocating for the FCC to complete special access reforms since I arrived at the Commission in 2009. I supported the 2012 special access order which will, for the first time, collect data that should help the FCC analyze the competitiveness of the market and determine what type of reforms and modernization of our special access rules are appropriate. After receiving approval from the Office of Management and Budget in 2014, the FCC finally completed the largest collection of data to analyze the special access market earlier this year to answer this very question. I look forward to reviewing the staff's analysis which will enable the FCC to develop a data-driven proposal to appropriately reform the special access market.

**2. I understand that the Commission recently denied a waiver for an FM translator to be used by an AM station in Tell City, Indiana. The FCC cited a pending AM Revitalization proceeding as one of the reasons for denying the waiver; you thought that it would be better to deal with that waiver as part of the larger proceeding.**

**But in another and similar situation, the Commission was willing to grant Grain Management LLC a waiver of the designated entity requirements, even though the Commission had announced it would re-examine the requirements as part of a broader review of the designated entity program through rulemaking and the Chairman circulated that rulemaking to the commissioners shortly after the Commission granted the waiver. This doesn't seem consistent, and I'm not entirely sure why the one company got its waiver in the face of the large rulemaking while the other is left to wait.**

**What is the status of the AM Revitalization docket? Doesn't this apparent inconsistency seem like it sends mixed messages to small businesses?**

While the status of the AM Revitalization docket is pending, I do not see any inconsistency between the denial of the waiver petition from the Tell City, Indiana AM radio broadcast station and the grant of the limited waiver from the Attributable Material Relationship (AMR) Rule to all entities similarly situated to the petitioner Grain Management, LLC. The Media Bureau denied the Tell City waiver petition because the issues the radio station raised were being considered in the pending rulemaking

proceeding on AM Revitalization and there was no imminent proceeding or action for which Tell City needed a waiver. With regard to the AMR Rule, however, exigent circumstances were present that warranted a limited waiver from that rule to all parties. Specifically, the Commission had scheduled Auction 97 for AWS-3 licenses to commence in November 2014. In order to participate as a Designated Entity in that auction, Grain and other parties similarly situated would have needed a waiver from the AMR rule. In the May 2014 Incentive Auction Order, the Commission announced its intent to initiate a rulemaking proceeding to consider comprehensive changes to all the competitive bidding rules. Unfortunately, the Commission did not start that rulemaking proceeding until late October 2014. There was no way the Commission could have wrapped up the competitive bidding rulemaking proceeding in time to allow parties to take advantage of a proposed change to the AMR rule in the AWS-3 auction.

**3. The January 31, 2012 Lifeline reform Order states the Commission will determine an appropriate budget for the Lifeline program within a year of order. It has been over three years since this Order was adopted and the Commission has yet to adopt a budget for the Lifeline program. When will the Commission follow through on its order and adopt an appropriate budget for the program and what will that budget be?**

I appreciate that you asked this question. In November 2014, I outlined five principles that would completely restructure the Lifeline program, ranging from service eligibility to carrier participation. Lifeline, which was established in 1985, has not been restructured in its 30 years. The FCC must modernize the program, reduce administrative burdens on providers in order to increase competitive options for low-income consumers, streamline the process for eligibility, leverage efficiencies from other federal benefit programs, ensure that low-income consumers have access to advanced telecommunications and information services, and ensure that such services are “affordable,” as directed by Congress. Finally, we need to bring more dignity to the program.

At this time, I believe that we need additional information before establishing a budget to ensure the FCC meets our universal service obligations without foreclosing certain consumers from access to affordable service. Currently, fewer than 40% of eligible households participate in the program. If more consumers are eligible and want to participate, I do not believe they should be prevented from doing so.

The obligation to ensure that rural, high-cost and insular areas have access to reasonably comparable service appears in the statute, with equal weight to the requirement that low-income consumers do so as well. In the FCC’s high cost program, all carriers receive support and are able to operate and maintain their networks. The FCC adopted the budget for rate of return carriers after it analyzed the support that they had been receiving. At that point, we determined what level of support was sufficient. There is no similar analysis here and I believe we need more information after we restructure the program to determine whether a budget (or at what level) is appropriate.

While I do not believe a budget is appropriate at this time, I am not opposed to asking questions in a Notice of Proposed Rulemaking to help the FCC gather data necessary to further analyze this issue.

## The Honorable Brett Guthrie

**1. A concern has been raised with me by some of my local video distributors about the definition of the term “buying group” as it relates to program access rules. As a result of the restrictive definition, I understand that many multichannel video programming distributors are unable to avail themselves of the program access protections intended by statute since they negotiate the bulk of their programming agreements through their buying group, the National Cable Television Cooperative.**

**My understanding is that the Commission has been reviewing for a few years now a pending Further Notice of Proposed Rulemaking, which contained a tentative conclusion that the definition of buying group should be updated as it applies under the program access rules. Since no final decision has yet been rendered, what is the status of this rulemaking? Will the Commission take up this issue by the end of the summer?**

I understand that the record in this proceeding indicates that the definition of “buying group” has not yet proven to disqualify the National Cable Television Cooperative from seeking statutory program access protections. The rulemaking is still pending, and I understand that there is no plan at this time to take up this issue by the end of the summer.

## The Honorable Mike Pompeo

**1. Section 224 of the Communications Acts establishes two formulas for determining the rate carriers pay utilities to attach their lines to utility poles – the cable rate and the telecommunications rate. While the FCC’s 2011 reforms attempted to equalize the rates produced by these two formulas, under certain circumstances the telecommunications rate formula may still produce significantly higher rates. Reclassifying cable broadband services as telecommunications services will subject cable operators to these higher rates. NCTA estimated the annual cost of these increased fees could be as high as \$150-200 million. This will have a detrimental effect on deployment, especially in rural areas where there are many more poles than in urban areas, and on adoption, as the higher rates will ultimately be borne by consumers.**

- Commissioner Clyburn, you voted for the 2011 pole attachment rate reform – aren’t you concerned the reclassification walks those reforms backwards?**

The FCC’s Open Internet Order removes impediments to broadband competition and deployment by allowing new entrants access to poles. Access to poles, as well as rights of way, are critical to deployment and the FCC’s reclassification ensures that all broadband providers have the right and ability to access poles. Rights of way and pole access lead to competition and competition generally leads to better service and lower prices for consumers.

In terms of the rates paid by cable providers for access to pole attachments, the FCC in the Open Internet Order, cautioned that any increases could “undermin[e] the gains the Commission achieved by revising the pole attachment rates paid by telecommunications carriers.” The FCC also committed to “monitor[ ] marketplace developments following this Order and can and will promptly take further action in that regard if warranted.”

Last month, the FCC refreshed the record on this issue and I hope the Commission moves swiftly to resolve outstanding petitions for reconsideration.

If you are aware of any instances where cable providers are faced with increases in the cost to access poles, please let me know. I want to ensure that the FCC follows through with its commitment to take swift action if there is evidence that pole attachment rates are increasing.

### **The Honorable Anna Eshoo**

**1. Opponents of net neutrality suggest that the recently adopted order would lead to regulated rates for broadband. At last month's Commission meeting you pushed back on that rhetoric. Can you point to an example of the FCC ruling that a rate is unreasonable in a context other than inmate calling or a tariff investigation?**

To date, no one has answered my challenge to provide example of the FCC ruling that a rate is unreasonable in a context other than inmate calling or a tariff investigation. So, the answer to your question is no, and I find that telling.

### **The Honorable John Yarmuth**

**1. The free exchange of information is at the heart of our democracy. All of us are well aware that television and radio political advertisements have saturated the airwaves since the Citizens United, SpeechNow, and McCutcheon decisions. Our constituents deserve to have as much information about these ad buys as possible. First, I want to commend the Commission for their ongoing work to expand the online public political file.**

The FCC's online political ad files have received approximately 5 million views, which shows that the public clearly has an interest in seeing who is spending money in politics. However, much of the data in the political ad files is not sortable/searchable. While projects like Political Ad Sleuth have done an effective job at making the data more accessible, I believe the FCC could significantly improve the usability of the files so that millions of Americans could more easily view the information.

- **Will you commit to improving the political ad file to ensure that its data is fully searchable and sortable so that the public knows who is trying to influence them during election season?**

In the 2012 Online File Order, the Commission committed to improving the searchability of the database. Currently, efforts to expand the database are moving forward. This effort will provide the public with increased access to important information about who is trying to influence them during election season. At the same time, the Commission continues to look into improving the searchability of the database.

### **The Honorable Yvette Clarke**

**1. Commissioner Clyburn, I applaud your efforts to re-direct the conversation back to universal service reform and to the people who are not benefitting from this 21<sup>st</sup> century pathway, particularly the incarcerated and their families. I want to hear more about your ideas to reform the inmate calling fees process.**

We know that meaningful communications beyond prison walls helps to promote rehabilitation and reduce recidivism. As a result, we should do all in our power as a society to promote communication and connectivity with friends and family of the incarcerated. Unfortunately, the inmate calling system's egregiously high phone rates have discourage such contact. Ever increasing rates make it difficult if not impossible for struggling families to stay in touch.

I was extremely proud as Acting Chairwoman to take the first step to meaningfully tackle this issue. In August 2013, the FCC adopted interstate rate caps to ensure that such rates are just and reasonable. When the FCC's rate caps for interstate calls went into effect in February 2014, interstate call volumes in some cases went up 70 percent and in one case as high as 300 percent. These data remove any doubt that unaffordable rates discourage contact while a more affordable regime promotes communication.

The FCC must reform all aspects of inmate calling services to finally bring much deserved relief to families, friends, lawyers and clergy. While the FCC's rate caps have had positive results with call volumes increasing, the reforms were limited to interstate calls. Approximately 85% of calls are intrastate, however, and these call rates have not been reformed. We have also seen fees and charges such as those to open an account, put money into an account, close an account, or even refund money to an account, known as ancillary charges, actually increase since we issued the first order. The FCC needs to act swiftly and adopt a reasonable rate structure for all calls, regardless of where they originate.

Data underscore the critical need for the FCC to promote connectivity and reform inmate calling services. In April 2014, the Department of Justice released a report analyzing the five-year recidivism rates for over 400,000 prisoners in 30 states, and the results are troubling. Two-thirds were rearrested within three years, and three-quarters were rearrested within five years. These trends come with enormous societal costs. In addition to more crime, crowded correctional facilities, more expensive prisons, and the judicial time required to prosecute these offenses, it costs an average of \$31,000 per year to house each inmate. While we do not know how to solve all the criminal justice challenges, we do know that meaningful communication helps to promote rehabilitation reducing recidivism.

In addition to traditional telephone calls, communications within correctional facilities are also migrating to new technologies such as video visitation. While the FCC is poised to reform the calling services, we do not want to create a loophole where calls migrate to another platform and consumers are once again left with an unaffordable rate structure.

For this reason, the FCC sought comment on the need for reform of alternative technologies in correction facilities in our October 2014 Further Notice of Proposed Rulemaking. We specifically asked about video visitation as the FCC needs to be forward-looking and ensure protections are in place today and in the future. We are trying to develop a record on what is occurring and whether the FCC needs to intervene.

It is my hope that the FCC will take final action this summer. I appreciate your

leadership on this issue and look forward to working with you to bring justice when it comes to inmate communications.