



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

Mike O'Rielly  
Commissioner

June 12, 2015

Charlotte Savercool  
Legislative Clerk  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Re: Questions for the Record

Dear Ms. Savercool:

Please find enclosed my responses to the questions for the record in connection with my testimony at the March 19, 2015 Hearing entitled "FCC Reauthorization: Oversight of the Commission."

A copy of this letter and responses are also being sent to you today via email at [Charlotte.Savercool@mail.house.gov](mailto:Charlotte.Savercool@mail.house.gov).

Thank you and please do not hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Mike Rielly".

Michael O'Rielly  
Commissioner

Enclosure  
cc w/enc: Charlotte Savercool (*via email*)

**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?

**I appreciate the point that you raise in your question and it is certainly something that the Commission must take into consideration before imposing any type of new rules in this area. In particular, it is imperative that the Commission fully understand what is happening in the current marketplace prior to suggesting efforts that could lead to rate regulation.**

2. 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?

**Since this is an item presently before the Commission for consideration at our next Open Meeting, I must respectfully refrain from commenting on the particulars of this issue. However, I have argued in the past in a blog post (<http://go.usa.gov/33Wcx>) and previous Senate Congressional testimony that it is past time to enact a sound spending cap for the Lifeline program for numerous reasons. I am hopeful that this issue will be given due consideration in our upcoming deliberations.**

**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 do not believe that any Commission item should be delayed for multiple years, forcing the parties to await an answer and suffer the effects of uncertainty in the meantime. That said, under the Commission's procedures as they are today, the Chairman of the Commission has sole authority to control the agenda. Accordingly, I cannot promise a timeline for the consideration of this item, although I am ready to consider it whenever presented. Substantively, I should reserve judgment until I see the particulars of any recommendation by the Chairman, but I do understand and generally sympathize with the central theme of the arguments presented so far.**

**The Honorable Anna Eshoo**

1. I congratulate you on the bipartisan partnership you recently formed with Commissioner Rosenworcel to free up additional unlicensed spectrum. What do you see as the greatest barrier to FCC action in the 5 gigahertz band? Are you concerned that LTE-U may undermine consumer Wi-Fi use?

**Today, the biggest barrier to action is the unwillingness of incumbent users, in this case the automobile manufacturers and related safety equipment providers, to seriously consider sharing the 5.9 GHz spectrum. I would also suggest that the Department of Transportation has articulated an inappropriate standard for consideration and approval of unlicensed devices in this band. Thankfully, the Commission has a history of successfully finding ways to allow sharing while preventing harmful interference, including protecting sensitive Department of Defense systems in multiple bands. Therefore, I have little doubt that sharing is possible in this band as well.**

**Separately, I am mindful of both the concerns over the deployment of LTE-U in Wi-Fi bands and the potential benefits of such deployments, and it is a subject that I will continue to follow. It is my understanding that those seeking to deploy LTE-U systems have made it clear that they do not intend to disrupt or harm the Wi-Fi experience. This is especially true for those equipment manufacturers and chip makers that are actively involved in providing equipment and chips for the Wi-Fi community and those service providers that have deployed Wi-Fi networks at great expense. Accordingly, I support a watchful eye approach over one that requires Commission filings and burdens. Moreover, I have deep concerns that the Wireless Telecommunications Bureau and Office of Engineering and Technology's recent release of a Public Notice relating to LTE-U and Wi-Fi could interfere with or improperly influence the private sector standard setting process.**

**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?

**I would not be opposed to efforts to improve the digitalization of the political files of broadcasters and others, if doing so does not increase or leads to only de minimis increases in costs for those entities to comply with Commission's rules. I cannot speak to whether the Commission could accomplish this function on its own.**

### **The Honorable Marsha Blackburn**

1. On March 30<sup>th</sup>, the Wireline Bureau issued an order that subsidizes broadband build out in areas where existing providers are already offering high speed service. Did the FCC properly notice what appears to be an arbitrary distinction whether or not the incumbent provider had a customer in the area as opposed to whether the provider offers service to an area? And how does the FCC justify that distinction?

**I appreciate the concerns you raise in your questions. This situation also highlights the issues that can arise when substantive decisions are delegated to Bureau staff instead of being decided by the full Commission. A small number of entities have now undertaken the added expense of filing petitions for reconsideration and applications for review of certain decisions by the Bureau in the challenge process. In particular, some entities argue that the Bureau improperly ignored their service offerings in some areas. Alternatively, other entities argue that the Bureau did not conduct due diligence to determine the veracity of claims of service offerings in other areas. I am hopeful that the Commission will soon consider – and modify as necessary – any inaccuracies, to the extent any exist, in its challenge process. Others, including some that raised concerns about whether the standard was properly noticed, chose not to seek review of the Bureau's order and will, therefore, be bound by the Bureau's standard and ensuing decisions.**

### **The Honorable Brett Guthrie**

1. Do you believe these bills would create bureaucratic red tape as the Chairman suggests in his testimony?

**I strenuously disagree with the Chairman that the proposed FCC process reform legislation would create additional bureaucracy or harm the ability of the Commission to conduct its work. These bills are common sense efforts to improve the work and product of the Commission. They would also lead to greater transparency regarding Commission**

**actions for the American people. Beyond misreading the specific provisions of the bills, the Chairman seems to ignore the positive effects that these bills, if enacted, would have.**

**The Honorable Mike Pompeo**

1. The Chief of the FCC's Enforcement Bureau recently made the following statement:

"Generally speaking, I've found that most companies want to do the right thing, and when it's clear that something is impermissible, they generally don't do it. So when you're in enforcement, you're almost always working in a gray area."

- Commissioner O'Rielly, do you think the Enforcement Bureau should be operating "in a gray area," or should it be focused on clear violations of the Commission's rules?

**I support vigorous enforcement actions against entities that violate the communications law or Commission rules. However, in order to have an effective enforcement regime, everyone must be notified of what practices are impermissible and subject to enforcement. To the extent that there are so-called "gray areas," it is the obligation of the Commission to provide clarity to regulatees so they are not subject to fines and penalties without proper notice. Considering that there are plenty of areas in which violations are not gray but have been improperly ignored, such as pirate radio, I would support efforts by the Commission to focus its immediate attention on these matters.**