



Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

July 21, 2015

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on March 19, 2015, at the hearing entitled "FCC Reauthorization: Oversight of the Commission."

If you have any further questions, please contact me at (202) 418-0095.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Dabbs".

Michael Dabbs,  
Director

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Enclosure

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## Attachment 1—Additional Questions for the Record

### The Honorable Greg Walden

**1. Chairman Wheeler, you recently said the Commission has finally begun the process of gathering necessary special access data to examine competition, but you “are not idly waiting for the data to come in” and want to move ahead now on special access terms and conditions. I understand your recent data request was a massive effort, consuming tens of thousands of hours. Why would you initiate a data request and then choose to move forward without the benefit of the data?**

Response: The special access proceeding is multi-faceted. There are certain actions the Commission can take that are not dependent on analysis of the industry-wide data collection, and we are exploring all those options as part of our broad effort to address our special access rules comprehensively.

**2. 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?**

Response: We recognize there are a number of competing service providers in the nation at large. The FCC has previously found, however, that competition for special access services appears to occur at a very granular level, in a geographic area much smaller than the entire nation. One area may have robust competition while another depends upon a sole incumbent provider for service. The Commission’s comprehensive analysis of the data in the special access proceeding will help determine when and where competition is sufficient to constrain special access rates to just and reasonable levels.

**3. According to a recent press report the number of enforcement actions against pirate radio operators is the lowest it has been since 2005 -- less than 200 in 2014 and it is the first time since 2009 that less than \$100 thousand in penalties were levied.**

**For each Fiscal Year 2009, 2010, 2011, 2012, 2013, 2014 identify the number of complaints received formally or informally by the FCC regarding pirate radio operations. For each of those years identify the number of pirate radio operations the FCC confirmed were broadcasting. For each pirate radio operation identified in each of those years identify the frequencies being used and location of the unauthorized transmission. For each of those years identify the number and type of enforcement action taken by the FCC to address these unauthorized transmissions. For each transmission subject to enforcement action identify when the illegal transmissions ceased. Identify those instances in which multiple actions were taken against the same entity over the course of the FY2009-2014 period. For each of those years identify the location of each pirate radio operation known to be broadcasting by the FCC and against which no action was taken within 30 days.**

**Has any guidance or instruction been given by the Office of the Chairman or Enforcement Bureau to Commission staff to not enforce the statute or commission rules with regard to unlawful operation? Identify each instances in which a pirate radio operation was alleged or known by the FCC to be transmitting and no enforcement action was taken within 30 days. For any instances, identify the location of the illegal operation and explain why no action was taken to address the unauthorized transmissions.**

Response: The Commission is committed to the strong enforcement of the rules prohibiting unauthorized radio broadcasting. The Office of the Chairman and the Enforcement Bureau (EB) have not given guidance or instruction to Commission staff to not enforce the statute or Commission rules with regard to unlawful operation. Indeed, earlier this year, EB conducted “pulse enforcement” initiatives in two of the cities with the worst pirate radio problems – Miami and New York. Over several weeks, EB field agents issued 23 enforcement actions against pirate radio operators and the landlords housing their operations and conducted nine on-site station shut downs. This fiscal year, the Bureau has issued more than 100 enforcement actions related to pirate radio activity.

The Commission’s resources are limited, however, and field agents handle many other important issues, including radiofrequency interference problems affecting thousands of consumers or public safety. Indeed, in the current flat budget environment where the Commission’s staffing is at its lowest in 30 years, pirate enforcement presents a particular challenge because of the heightened resources required to investigate these cases. Many pirate investigations require overtime pay because the pirate operators only broadcast on weekends or overnight. In addition, some pirate operators broadcast from high-crime neighborhoods, thereby requiring field agents to go out in pairs or obtain support from local law enforcement.

In mid-2014, in recognition of the budgetary and personnel constraints on EB, the entire Bureau began an effort to prioritize its work to focus on the most egregious violations of the Communications Act and the Commission’s rules. With regard to pirate radio enforcement, field offices focused their pirate enforcement efforts on the most egregious pirate operators, such as those operating at high power, causing interference, or running advertisements. Through this focused effort, the Bureau has targeted its resources in the most efficient way towards keeping the worst violators off the air. Further, this fiscal year, the FCC has been working to identify new policy and enforcement solutions to pirate radio. In recognition that pirate radio cannot be solved exclusively through enforcement, the Commission has worked with outside stakeholders, including the National Association of Broadcasters (NAB), to develop policy options to respond to pirate broadcasting. Indeed, on June 29, 2015, the Commission held a “pirate radio summit” with NAB and other broadcaster representatives to discuss pirate radio enforcement and policy ideas.

The data below are based on EB records beginning in January 2012, when the Bureau converted to a new database during FY12. We note, however, that some of the questions seek information that is either unavailable or that the Bureau does not track in a searchable format. Thus, EB does not independently track confirmation of pirate operations, the frequencies at issue, the location of unauthorized transmissions, or when transmissions ceased. In addition, the data do not reflect the full scope of the Bureau’s pirate enforcement work, *e.g.*, instances where agents obtained

cooperation from landlords, received voluntarily surrendered broadcasting equipment, assisted with *in rem* seizures by U.S. Attorney’s Offices, or supported local law enforcement initiatives against pirate operators. Regarding the other questions, however, we have provided the available data requested.

Number of complaints received formally or informally by the Enforcement Bureau regarding pirate radio operations.

	FY-12 *	FY-13	FY-14	FY-15 (as of 6/22/2015)
<b>Total Complaints</b>	432	472	402	280

Number and type of pirate radio enforcement actions:

	Field Issued Pirate Radio Actions				
	FY-12	FY-13	FY-14	FY-15 (as of 6/22/2015)	Total Issued Actions
Citation	6	1	0	0	7
NOUO	66	227	137	86	525
NOV	0	4	0	0	4
Verbal Warning	0	5	9	4	18
Warning Letter	37	46	30	16	129
Forfeiture Order	6	19	13	3	43
NAL	22	9	11	1	46
MO&O	1	0	2	0	3
Order	2	0	0	0	2
<b>TOTAL</b>	<b>140</b>	<b>311</b>	<b>202</b>	<b>110</b>	<b>777</b>

Instances in which multiple actions were taken against the same entity over the course of the period.

Since January 2012, the Enforcement Bureau has acted 104 times against parties that had received an earlier enforcement action for unlicensed radio broadcasting.

**4. Congress gave the Commission a statutory mandate to protect specific aspects of consumer privacy when it directed the do-not-call list to be established. Based on the Commission’s quarterly complaint reports the FCC has received about 224,000 do-not-call complaints from 2010 – 2013 – almost 75,000 in 2013 with a trend upward. Overall TCPA complaints for that period total nearly 820,000.**

**In previous submissions to the Committee you told us that generally the FCC needs to issue a citation before it can issue a monetary penalty against an entity violating the TCPA rules. Yet in response to previous inquiries you have informed us that the Enforcement Bureau has issued only 18 citations – 4.5 citations on average a year over the 2010 - 2013 period. In**

**contrast to the level of this enforcement activity your recent data show that the total number of TCPA complaints increased in 2014 and do-not-call complaints increased by nearly 22,000 from the 2013 level to more than 96,000.**

**How many citations has the Commission issued in 2014 against violators of the do-not-call rules? How many for violations of the Commission's other TCPA rules? Explain what steps the Commission will take to resolve the growing backlog of TCPA complaints, which appears to now exceed one million since 2010.**

Response:

The FCC's Consumer Help Center serves as the intake system for all consumer complaints. Complaints about issues such as loud commercials, the Do Not Call List, robocalls, unwanted telephone calls, unsolicited faxes and similar issues covered by the Telephone Consumer Protection Act are shared among the Enforcement Bureau as well as FCC bureaus and offices. The Commission does not resolve individual complaints on these issues. However, the collective data helps inform the Enforcement Bureau on what consumers are experiencing, which may lead to investigations and/or serve as a deterrent to the companies we regulate.

The Commission's Enforcement Bureau (EB) reviews these complaints to identify trends in consumer complaints so that the Commission can best apply its limited enforcement resources to take action against entities that have a pattern of violating the FCC's laws and rules.

For example, TCPA complaints received in EB are reviewed by subject matter experts to determine if they contain allegations of wrongdoing. Many complaints understandably convey frustration or dissatisfaction with a person or entity, or discuss a subject, without actually alleging legal wrongdoing; others represent isolated incidents that do not form a trend that would allow judicious use of extremely limited FCC resources. A significant number of complaints are closed for these reasons at this step.

For this reason and several others, the raw numbers of such complaints do not correlate to the number of enforcement actions that exist at any given time, or provide an accurate measure of EB's enforcement efforts.

The remaining TCPA complaints are reviewed and investigated, including by sending out subpoenas to identify the party responsible for the alleged violations. Unfortunately, for a large majority of these complaints, the widespread prevalence of spoofed numbers makes action against violators impossible, because the source of the apparently unlawful calls cannot be traced; another large percentage of complaints cannot be acted upon because the source of the calls is located outside of the United States and beyond the Commission's jurisdiction. In 2014, more than 70% of the complaints that FCC staff investigated were untraceable, spoofed, or originated overseas. Finally, the Commission is constrained from taking action against some entities that violate the TCPA because of the one-year statute of limitations from the date of violation that applies to most enforcement actions, including TCPA violations. In the past, the Commission has requested that Congress extend the statute of limitations for Communications Act violations to at least two years to provide more time to investigate and act; expand the scope of coverage of the TCPA to apply to persons outside of the United States when calls are made to people within its borders; and has requested authority to regulate third party spoofing services.

Accordingly, the number of enforcement actions the FCC pursues is significantly smaller than the number of consumer complaints that it receives. Nevertheless, the Commission continues to vigorously pursue violators and has been successful when investigating consumer complaints about the TCPA in those instances where there was sufficient information to identify the perpetrator of the violation and to prove that a pattern of violations is occurring. In 2014, over 26,000 complaints met EB's criteria for review (i.e., stated an actionable violation; were within the statute of limitations; and did not represent the only, or one of a few, complaints against the entity) and were reviewed to determine whether investigations should be launched.

In 2014, the Commission issued eleven citations, two Notices of Apparent Liability, one Forfeiture Order, two Consent Decrees, and one Enforcement Advisory related to TCPA violations. The eleven citations were based on a combined total of more than nine hundred consumer complaints. Importantly, the TCPA enforcement actions that the FCC took in 2014 resolved approximately five million violations, which FCC staff uncovered through its investigation process. Moreover, so far in 2015, the Enforcement Bureau has issued three citations representing approximately 60,000 additional violations of the TCPA identified by FCC investigators.

<b>2014 TCPA Enforcement Actions</b>				
<b>Type of Action</b>	<b>Target/Recipient</b>	<b>File Number</b>	<b>Violation</b>	<b>Date of Action</b>
Citation	Superior Roofing, Sam Mitchell	EB-TCD-13- 00011549	FAX	11-Feb-14
Citation	Globalnet Capital, Ahmed Amer	EB-TCD-14- 00013392	DNC, PREREC, TIME OF DAY, CALLER ID	21-Feb-14
Citation	Smart Procure, Jeffrey Rubenstein	EB-TCD-14- 00013101	FAX	7-Mar-14
Citation	Timeshare Relief, Inc.	EB-TCD-13- 00012690	DNC, PRERECORDED, CALLER ID	25-Mar-14
Citation	Leads Direct Marketing	EB-TCD-13- 00008501	DNC, PRERECORDED	9-Apr-14
Citation	Metrolina Exchange Corp	EB-TCD-13- 00008121	FAX	9-Apr-14
Citation	Smart Energy Advocates, LLC, Andrew Gold	EB-TCD-14- 00015240	DNC, PRERECORDED	20-May-14
Citation	Federal Verification Co., Inc.	EB-TCD-14- 00015760	DNC, CALLER ID, PRERECORDED	11-Jun-14

<b>2014 TCPA Enforcement Actions</b>				
<b>Type of Action</b>	<b>Target/Recipient</b>	<b>File Number</b>	<b>Violation</b>	<b>Date of Action</b>
Citation	South Bay Consulting, Op as QB Training, Robert McDaniel	EB-TCD-14-00015771	FAX	11-Jun-14
Citation	Seventy Eight LLC, Jeffrey Bernier	EB-TCD-14-00016293	DNC, PRERECORDED, CALLER ID	24-Sep-14
Citation	Crystal Training, Rudolf Galan, Mgr	EB-TCD-14-00017175	FAX	1-Oct-14
Notice of Apparent Liability for Forfeiture	Scott Malcolm/DSM Supply, et al.	EB-TCD-12-00001013	FAX	2-Feb-14
Consent Decree	Laser Technologies d/b/a Laser Tech, and Joseph Mistretta	EB-TCD-12-00000223	FAX	21-Mar-14
Forfeiture Order	Presidential Who's Who, Inc.	EB-TCD-12-00000217	FAX	28-Mar-14
Notice of Apparent Liability for Forfeiture	Dialing Services, LLC	EB-TCD-00001812	PRERECORDED	8-May-14
Consent Decree	Sprint Corporation f/k/a Sprint Nextel Corporation	EB-TCD-00002713	DNC	19-May-14
Enforcement Advisory	Telephone Consumer Protection Act Robocall Rules; Warning Political Campaigns And Promoters Against Robocall Abuse	N/A – DA 14-1505	PRERECORDED	21-Oct-14

**5. The Commission has made efforts to reform Lifeline over the last few years, including an effort to take the eligibility determination out of the hands of service providers. To that end, the Commission sought to create a National Lifeline Eligibility database. The**

**Commission set for itself a December 31, 2013 deadline for delivering that database. Has the Commission delivered the National Eligibility database? If no, explain why and when will it be implemented?**

Response: In articulating a desire in 2012 to develop a national, automated means to determine Lifeline eligibility, the Commission sought to both “improve the accuracy of eligibility determinations” and “reduce burdens on consumers as well as on ETCs.” In attempting to execute on that concept, however, the Commission experienced substantial challenges, including the complexities involved in coordinating the efforts of multiple state and federal agencies with relevant information. Despite those challenges, the Commission continues to believe that a nationwide system for verifying subscriber eligibility would further Lifeline reforms and serve the goals articulated by the Commission in 2012.

To that end, in the just-released 2015 Lifeline Order and FNPRM, the Commission proposes to remove from ETCs the responsibility for determining eligibility, a key underlying purpose of any nationwide automated eligibility verification system. Specifically, the Commission seeks comment on removing the eligibility determination from ETCs by establishing a national verifier to verify subscriber eligibility. The Commission also seeks comment on more closely coordinating with other agencies to verify subscriber eligibility. These steps build upon actions the Commission has already taken to work with its federal and state partners to enable additional automated means to verify subscriber eligibility. For example, the Commission released a joint letter last year with the Department of Agriculture, directing SNAP state agencies to respond to state Lifeline administrators and Eligible Telecommunications Carriers, seeking to verify the eligibility of prospective Lifeline consumers, and indicate whether a Lifeline applicant consumer is in fact receiving SNAP benefits.

**6. As part of its 2012 Lifeline reform package, the Commission was to deliver within one year a National Duplicate Screening database so that it could properly enforce its “one benefit per household” rule. The Commission took two years to deliver this database. How has this database performed to date? Has the Commission’s database approved duplicate enrollments? If so, how many?**

Response: Since its inception, the National Lifeline Accountability Database (NLAD) has been successful at enforcing the “one benefit per household” rule and, as a result, has saved the Lifeline program hundreds of millions of dollars. Specifically, since USAC first began uploading subscriber information to the NLAD in early 2014, a substantial amount of duplicative support was detected and eliminated, saving approximately \$300 million on an annualized basis. Moreover, USAC has made several substantial refinements to its duplicate detection systems to strengthen NLAD’s ability to detect and eliminate duplicates. As these refinements were being implemented, USAC detected and eliminated a significant number of records, representing a savings of approximately \$46 million on an annualized basis.

**7. 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?**

Response: In the 2012 Lifeline Reform Order, the Commission said that it would evaluate an appropriate budget for the Lifeline program once its reforms were fully implemented. The reforms have bent the program growth curve and placed Lifeline disbursements on a downward trajectory. The Commission's 2012 reforms were even more successful than anticipated. Monthly disbursements began to decline in mid-2012 once the key reforms went into effect. After reaching a peak of approximately \$2.2 billion in 2012, disbursements declined in 2013 and again in 2014, at the end of which total program disbursements were approximately \$1.6 billion. If current trends continue, total disbursements for 2015 will be lower still. The Commission estimates that the reforms put in place in 2012 have eliminated over \$1 billion in waste, fraud and abuse, from, among other things, the elimination of duplicative support, the requirement for consumers of free Lifeline service to use their service every 60 days, and the requirement for consumers to recertify their eligibility every year. Overall, \$2.75 billion less was disbursed between 2012 and 2014 than the 2012 Lifeline Reform Order estimated would be spent in the absence of reform during that same period. This represents \$750 million more than the Commission's own savings goal. Following the successful implementation of those reforms, the Commission in the 2015 Lifeline Order and FNPRM is seeking comment on a budget for the Lifeline program.

**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?**

Response: The Commission sought comment in 2012 on a variety of issues related to our program access rules, including whether to modify the current definition of "buying group." The National Cable Television Cooperative (NCTC) sought the change because its existing practice excludes it from the definition, and thus, NCTC claims it is unable to avail itself of the complaint process under our rules.

Although the Commission made a tentative conclusion to potentially modify the "buying group" definition in the Further Notice, the record in the proceeding indicates that a rule change is not necessary for NCTC to qualify as a buying group, and it appears that this is more of a dispute over ultimate liability than a regulatory issue. NCTC previously complied with the requirements of the existing definition; past and recent filings have not demonstrated that it is burdensome to satisfy these requirements, should NCTC choose to do so.

The Media Bureau is currently in discussions with ACA as to whether there are some modest adjustments that can be made to the Commission's existing definition of "buying group" that will make it possible for ACA to fit within this definition and therefore have program access rights under Section 628 of the Act.

### **The Honorable Mike Pompeo**

**1. Mr. Chairman, I have been trying to understand the motivation for your agency in taking a Title II course of action on broadband when it is clear that the marketplace situation does not demand that action, and the FCC concedes in its order that it does not even intend to impose much of that regulatory regime on the companies providing Internet service.**

**I don't think I've ever seen an order that corrects for problems that do not now exist, and may never have been an issue. This abuse of the FCC's discretion, whether quarterbacked by the Obama Administration or not, is very jarring to this committee. It calls into question in my opinion the very role of an independent federal agency. Your actions should not be delineating business models for a particular industry. Putting your thumb on the scale is not the role of an independent agency. And that is what is happening here.**

**Moreover, this is not the only place where your agency is doing exactly that. You know well the concerns I have expressed to you over the agency's actions on the (Local Number Portability Administrator) LNPA contract, specifically to ensure that federal, state and local law enforcement and security agencies have unfettered access to this database, as they do today, to conduct their sensitive investigations.**

**I understand that there was an effort to have additional proposals submitted during the bidding. Recent reports suggest that the FCC staff may have played a role in making the decision not to permit additional proposals. And there is nothing in the public record that explains what did happen.**

- Can you tell me what role the agency had in the decision to cut off further bidding that would have had the result of driving down prices paid by the industry to access this data base?**

**Response:** The Local Number Portability Administrator (LNPA) contract is currently managed by a consortium of industry participants called the North American Portability Management, LLC (NAPM). Over several years, the NAPM, in close coordination with the North American Numbering Council (NANC) – the Commission's federal advisory committee on numbering issues, conducted a rigorous process to select an LNPA, with extensive input from industry, government entities and consumer groups with general oversight from the Commission. In its LNPA Order, released on March 27, 2015, the Commission approved the recommendation of the NANC that Telcordia Technologies, Inc. serve as the next LNPA. As you note, the conditional selection of Telcordia as the new LNPA results in substantial savings over the new contract period.

With respect to the specific process questions you raise, in the LNPA Order the Commission pointed out (at paragraph 42) that Neustar and Telcordia each were afforded the opportunity to submit a Best and Final Offer (BAFO) subsequent to their initial responses to the Request for Proposals (RFP) for the new LNPA contract, notwithstanding that the RFP provided prospective bidders with no right to even a first BAFO, much less multiple ones. The Commission also found that the NAPM's decision not to seek further bids was reasonable (at paragraph 44), noting that the selection proceedings already had two full rounds of competing bids, substantial time and effort had already been invested in reviewing those submissions, and in-person interviews with Neustar and Telcordia had been conducted; there was thus an ample record on which to proceed without another bidding round.

Finally, the Commission did not direct the NAPM or the NANC to do anything; rather, the Commission's action was entirely consistent with its assigned "involvement in and oversight of the LNPA selection process to ensure that the process runs efficiently and is impartial to all potential vendors and all segments of the industry" (at paragraph 46).

**2. 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.**

- **Chairman Wheeler, what effect does reclassification have on the costs that cable ISPs will have to pay to attach their wires to utility poles?**

Response: The *Open Internet Order* applies section 224 of the Communications Act to broadband Internet access services, and in so doing ensures that companies providing broadband Internet access service – but not previously entitled to the protections of section 224 – will have access to utility poles at reasonable rates. With respect to the regulated rates at which cable companies are able to attach their wires to utility poles, as I recently told participants at NCTA's Internet & Television Expo, I am committed to ensuring that cable operators do not confront excessive rates for pole attachments. On May 6, 2015, the FCC's Wireline Competition Bureau issued a short public notice to refresh the record on the pending NCTA and COMPTTEL petition for reconsideration seeking to bring cable and telecommunications rates into closer alignment. Once the record is refreshed, my expectation is that a recommendation to the full Commission will be forthcoming to bring the rates into as close alignment as the Communications Act allows.

**3. Chairman Wheeler, in the fact-fiction sheet that the FCC recently released, you list as myth: This will increase consumers' broadband bills and/or raise taxes and fact: The Order doesn't impose new taxes or fees or otherwise increase prices.**

**I notice that the “Fact” response is very carefully worded to indicate that the FCC won’t impose new taxes or fees. You also note that the Internet Tax Freedom Act (ITFA) prohibits state and local taxes on broadband access.**

- **First, you make no mention of the possible imposition of state fees on broadband service. If broadband is now reclassified as a telecommunications service, can’t states start to impose telecommunications fees, like state USF fees, on broadband?**

Response: The Order will not amount to new fees or taxes on consumers. The Internet Tax Freedom Act explicitly prohibits the assessment of fees for Internet access. The Open Internet Order is fully compliant with that law. States currently are preempted from assessing USF contributions on broadband. The Order announced the Commission’s “firm intention to exercise . . . preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme” adopted in the Order. The Order also disapproves of any state or local franchising authority requirement to pay any new franchising fees.

**4. There’s also been considerable debate whether states and local governments can find a way around ITFA to begin taxing broadband service – if not directly on consumers, higher up in the chain. Not everyone agrees with your assessment that ITFA protects against all taxes in light of the reclassification.**

- **Chairman Wheeler, I want to ask for your commitment to keep the Internet tax free, so I have a question. You have spoken about the use of Section 706 to encourage the deployment and adoption of broadband services. And you interpreted that as giving you the authority to stroke down state laws regarding municipal broadband. Would you agree that increasing the cost of broadband service through taxes and fees discourages broadband adoption?**
- **Would you use your authority under Section 706 to pre-empt any state or local law that seeks to impose any fees or taxes on broadband service?**

Response: In Section 706 of the Telecommunications Act of 1996, Congress directed the Commission to encourage broadband deployment and take immediate action to remove barriers to infrastructure investment and promote competition when advanced broadband is not being deployed to all Americans in a reasonable and timely fashion.

In our February 26, 2015 decision regarding certain state laws in North Carolina and Tennessee, the Commission found that certain statutory provisions in the North Carolina and Tennessee statutes constituted barriers to broadband infrastructure investment and competition, and we preempted those provisions pursuant to our authority under section 706. This action was taken in response to petitions for preemption filed by the City of Wilson, North Carolina (Wilson) and the Electric Power Board of Chattanooga, Tennessee (EPB).

The Commission’s decision does not preempt restrictive laws with respect to municipal broadband in other states. The decision does establish a precedent for reviewing similar laws in other states, and the Order stated that the Commission would not hesitate to preempt other, similar state laws if those laws constitute barriers to broadband deployment. Further, in the Open Internet Order, the Commission announced its “firm intention to exercise . . . preemption

authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme” that it adopted in that Order.

**5. I have recently heard concerns related to the excessive royalty rate of the ATSC patent pool, which is administered by a private patent pool administrator, MPEG LA. The licensing fees charged by the ATSC patent pool are five times as much as fees charged for similar technologies around the world (Europe and Japan).**

**As the FCC requires all TVs and tuning devices sold in the US to include an ATSC tuner, making it a government granted monopoly, manufacturers are left without choice but to pay the high royalty. Importantly, the December 1996 FCC report and order on the DTV proceedings stated that the “proponents agreed to make any relevant patents that they owned available either free of charge or on a reasonable, nondiscriminatory basis.”**

**As you know, I submitted a letter to the FCC on October 27, 2014 expressing my concerns about this potential exploitation. Although I appreciated Chairman Wheeler’s response to my letter on November 26, 2014, there were two incorrect assertions in the response letter.**

**First, the statement that “the ATSC patent pool fees include the patent royalty for the MPEG-2 decoding standard” is incorrect. ATSC receiver products include the capability of an MPEG-2 decoder, however does not include any licenses to MPEG-2 patent portfolio. Therefore, a separate license and payment of additional royalty of \$2 is required under MPEG-2 Video and Systems patents. As a result, many manufacturers end up paying \$7 per TV (\$5 for ATSC licensing and \$2 for MPEG-2 licensing), which increases the hidden tax on U.S. consumers.**

**Second, the statement that “other venues – including the Patent and Trademark Office and the International Trade Commission – are viable options for entities seeking resolution of patent fee issues” is also incorrect. If an entity thinks another is charging excessive royalty, there is nothing that the PTO can do. An entity can try to invalidate patents that it deems inappropriate, which is not relief. Also, an entity cannot go before the ITC and complain about excessive royalty. The only way is for an entity to not pay royalty, then get sued at the ITC by a patent owner, then subsequently raise FRAND defense at the ITC. This approach, however, has not been successful to date and does not address fees, as it only grants exclusion orders.**

- **Could you please elaborate on:**
  - **Whether the FCC has any plans to conduct oversight of the ATSC patent pool to monitor potential market abuse, and**
  - **Why I have not received a proper written correction to the agency’s response letter?**

Response: Thank you for highlighting certain inaccuracies in my November 26, 2014, response to your letter. You are correct that the ATSC patent pool fees do not include the patent royalty for the MPEG-2 decoding standard, but the ATSC patent pool does cover different patents than patent pools in other countries. And while the Patent and Trademark Office and International

Trade Commission have far more expertise in the field of patents, you are also correct that they are not the proper avenue for setting royalty rates.

The Commission continues to monitor potential market abuse with respect to the ATSC patent pool. If we believe that essential patents for the ATSC are not available on a reasonable and nondiscriminatory basis, then we will take appropriate action. To date, we have not received information suggesting that Commission intervention is warranted.

### **The Honorable Gus Bilirakis**

**1. You committed to preserve the integrity of public safety communications infrastructure by adhering to the goal articulated in your Fiscal Year 2016 Budget Request of taking action on 99 percent of complaints of interference to public safety communications within 1 day. You also committed to provide the Committee with a quarterly report detailing the Enforcement Bureau's success in meeting this metric. To that end, commencing with the second quarter of calendar year 2015 through the last quarter of your Chairmanship provide the Committee with a quarterly report. The report should be filed no later than ten business days after the last day of the quarter and include the following information:**

- a. Date and time the FCC was notified of alleged interference.**
- b. Identity of FCC field office notified.**
- c. Manner in which notification was made.**
- d. Location of alleged interference.**
- e. Date and time FCC personnel were dispatched to address alleged interference.**
- f. Location of FCC field office responding to notification.**
- g. Disposition of alleged interference including date and time resolved.**
- h. Type of service impacted by interference.**
- i. Analysis of whether metric was met.**

**Finally, in order to further ensure openness and transparency in the FCC's process post the data reported on the Commissions website when submitted to the Committee**

Response: As requested, attached please find a report on the Enforcement Bureau's public safety interference complaint response work for the 2<sup>nd</sup> quarter of CY2015, from April 1 through May 31, 2015. As documented in the report, the Enforcement Bureau responded within 1 day to all but 1 of the 69 public safety complaints that were properly filed with the Commission, thereby meeting our speed of disposal goal. The properly filed complaint that was not responded to in 1 day was initially handled by another Bureau and ultimately referred to the Enforcement Bureau.

As detailed in the report, consumers filed 4 public safety interference complaints online with the Consumer and Governmental Affairs Bureau, but the complaints were not timely referred to the Enforcement Bureau because the complainants mistakenly identified their complaints as non-public safety interference matters. To avoid such misunderstandings, the Commission recently modified its complaint intake screen for public safety interference complaints to refer complainants to the agency's Operations Center, which promptly sends such complaints to the Enforcement Bureau on a 24/7 basis. This should prevent future confusion and ensure the prompt referral of all public safety complaints.

Regarding the specific areas requested, the request seeks several categories of information that may be recorded in the Enforcement Bureau's case management database (the Enforcement Bureau Activity and Tracking System (EBATS)) but is not tracked in a searchable field, e.g., complainant contact information, location of interference, etc. Because manually identifying and providing that information would divert limited resources from other enforcement matters, we have provided the most responsive information available through automated data searches.

Your request touches on several areas where we plan to seek resources to enhance EBATS. For example, we plan to add fields to the system to track the date or time when an agent was dispatched to address alleged interference. We also hope to add fields to EBATS to track the date and time when an incident was resolved. Once we have made these enhancements, the report will be modified accordingly.

Finally, you have requested that we issue this report quarterly and post the data reported on the Commission's website. As we reviewed this request it became clear the resources necessary to prepare this report quarterly would be significant. Much of the data must be edited manually to ensure completeness and correct data entry errors. This requires reviewing the data line by line and diverts employees from core responsibilities, including responding to complaints and conducting investigations. A semi-annual report would ensure timely and accurate information without the same level of stress on resources. We have reached out to your staff to propose this solution and I hope this will address your request.

### **The Honorable Anna Eshoo**

**1. Earlier this month, the FCC's Managing Director testified that the agency needs additional funds to upgrade its IT infrastructure and move its headquarters within the next two years. How would these efforts be impacted if the Commission's appropriations were locked at the current level for the next four fiscal years, as the Majority's discussion draft proposes?**

Response: If the Commission's funding level is locked at the current flat rate for the next four fiscal years, we would be unable to restack or move the FCC's headquarters and face holdover costs as well as unmanageable rent increases of at least \$9M per year. The Commission has requested \$44,168,497 for moving costs in Fiscal Year 2016 from its regular budget, or a total of \$51,358,717 including funds from auctions to pay that program's share of the costs. The Commission expects the move will cost a total of \$70.9M of Commission funds over two fiscal

years. The new lease is projected to include a 28 percent reduction in rentable square footage, leading to a cost savings of \$119M over 15 years. The failure to move will lead to inefficiencies, cost overruns and a net loss for the Commission, the taxpayer and the licensees who support the Commission's activities.

Second, significant upgrades to improve the usability and efficiency of important mission systems, such as an upgraded Commission licensing system, would be delayed to the detriment of a wide range of stakeholders who routinely use our current outdated systems. The Commission's budget requires \$5.8M to replace the legacy infrastructure with a managed IT service provider; \$9.6M to continue rewriting FCC Legacy Applications as a modular shift to a modern, resilient, cloud-based platform; and \$2.2 million to improve the resiliency of the FCC systems to comply with FISMA. We have reprogrammed and utilized all available funds and require the requested amount to complete ongoing work as well as initiate essential upgrades. These projects will secure the Commission's systems and protect our stakeholders while supporting core FCC programs. Stalling this process now will lead to insecure systems lacking required resiliency, and risk potential disruptions in essential IT systems. It should be noted that the Commission's innovative, responsible, cost-effective problem solving has been recognized in this area with an Association for Federal Information Resources Management's ("AFFIRM") Leadership Award in Cloud Computing. The Commission received the award for its development and installation of the new Consumer Help Desk IT system.

Third, it is important to note that this Committee has directed the Commission to follow through on initiating the PSAP Do Not Call Registry – but the Commission lacks the \$250,000 in funds to stand up the system; more importantly, we lack the resources to fund the system in out years. Another expense not contemplated in a flat number is the National Broadband Map, which will cost the Commission \$3,000,000 per year to operate.

Finally, the Commission is already at a 30 year low for FTEs and has substantially reduced contractors but must face yearly salary increases and inflationary adjustments. Flat funding, no moving or restacking resources and a lack of funds for basic IT needs will cripple the agency and undermine its regulatory mission, including USF and auctions activities. We will be faced with potential reductions in force and furloughs that will undermine application and transaction activities as well as a variety of essential programs.

**2. It's my understanding that the Majority's draft legislation would cap the USF fund at \$9 billion for the next two years and provides no budget for the program beyond 2017. Would the draft bill impact the FCC's ongoing efforts to reform the four USF programs, including the recent updates to the E-Rate program? Wouldn't this proposal create uncertainty for USF recipients, including schools and libraries?**

Response: In modernizing the Commission's four universal service programs we have remained committed to meeting the goals of the programs as cost-effectively as possible. Just to cite one example, although the Commission increased the E-Rate program cap last year in the FCC's 2<sup>nd</sup> E-rate Modernization Order, for the current funding year we have been able to meet all requests for support without any increase in collections whatsoever. At the same time, we share your concern that placing an arbitrary cap of \$9 billion on the universal service fund (USF) for

the next two years with no clarity as to funding in later years would impact our ongoing efforts to reform the program by creating uncertainty that will discourage long term, cost-effective decision making by recipients in the various programs. In fact, the Commission raised the cap on the E-rate program specifically to provide increased certainty to schools and libraries that sufficient funding will be available for both the necessary connectivity to and within schools and libraries. With this increased certainty, local decision-makers can confidently proceed at a pace that best serves their students and patrons. A cap on the overall USF would introduce doubt as to whether the full amount of the increased E-rate cap would be available to schools and libraries and obviate the FCC's efforts to assure schools and libraries that sufficient funding will be available.

**3. I congratulate you on the successful adoption of last month's net neutrality rules. Can you highlight a few of the consumer protections that are the part of the FCC's order but are NOT addressed in the Majority's legislative discussion draft?**

Response: The Open Internet Order contains clear, sustainable, and enforceable rules to preserve and protect the open Internet as a place for innovation and free expression. The Order gives the Commission the tools it needs to protect an Open Internet over time as the marketplace evolves. For instance, in addition to the three bright-line rules, the Order adopts a standard for case-by-case adjudication – setting forth the basic principle that Internet Service Providers (ISPs) should not “unreasonably interfere with or unreasonably disadvantage” the ability of consumers to select, access, and use the lawful content, applications, services, or devices of their choosing; and of edge providers to make these available to consumers.

Both the Order and the Majority draft legislation adopt bright-line rules to prohibit conduct that we know harms Internet openness. In addition, however, the Order recognizes that there may be current and future practices that cause the same types of harms, but may not be covered by the blocking, throttling, and paid prioritization rules. That's why the Commission adopted the no-unreasonable interference “rule of general conduct,” in addition to the three bright-line rules. Grounded in both the Commission's Section 706 authority and its authority under Sections 201 and 202 to ensure that carrier practices are “just and reasonable,” this rule will serve as an important consumer protection standard. It will allow the Commission to prohibit broadband providers from employing unfair or deceptive practices that could harm consumers' ability to access the online services, applications, and content of their choice.

In addition, the Order also applies another important consumer protection – Section 222 of the Act – to broadband Internet service. Section 222 requires carriers to protect the confidentiality of its customers' private information.

**4. Thank you for your continuing commitment to ensure that the upcoming incentive auction rules are sufficient to prevent excessive concentration of spectrum among the nation's largest wireless providers. Do you agree that wireless carriers who lack substantial low-frequency spectrum are at a competitive disadvantage?**

Response: Today, most low-band spectrum is in the hands of just two providers. The Incentive Auction offers an opportunity, possibly the last for years to come, for competitors to acquire low-band spectrum in significant quantities. One of our priorities for the Incentive Auction is to

ensure that competitive providers have a meaningful opportunity to access this spectrum, which I believe is critical to continue to enable a competitive marketplace. This is particularly important in rural areas, where low-band spectrum is necessary if competitors are to fill in their coverage gaps, and in urban areas, where low-band spectrum allows more reliable in-building coverage. Facilitating access to low-band spectrum by multiple providers is important to preserve and promote competition in the mobile wireless marketplace, which brings consumers more choices, lower prices, and higher quality services.

### **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?**

Response: Currently, the Commission is working on a proceeding that would expand the online file requirements to cable operators, satellite TV providers, broadcast radio licensees, and satellite radio licensees. The expanded rules, if adopted, will bring greater transparency to political advertising, ensuring that the public has access to the political files of all broadcasters and MVPDs, not just television broadcasters. If the Commission votes in favor of this expansion, we plan to focus our resources on improving the ability to search and sort all of the data available in the public file.

### **The Honorable Yvette Clarke**

**1. In addition to the 9-1-1 upgrades, what is being done to ensure that the EAS reflects the growing ethnic and language diversity of our nation? And, when can we expect for these advances in the EAS to happen?**

Response: The Commission is committed to promoting the delivery of alerts via the Emergency Alert System (EAS) to as wide an audience as technically feasible, including those who communicate in a language other than English or may have a limited understanding of the English language. Consistent with that goal, and Presidential directives on the establishment of national alerting infrastructure that is accessible to non-English speakers, we are currently considering ways in which we might best facilitate the Commission's understanding and public awareness of State, local and private efforts to distribute multilingual EAS alert message content

to the public. This might include, for example, a better understanding of the manner, if any, in which EAS Participants (broadcasters, cable systems, DBS and other service providers) make available EAS alert message content to persons who communicate in languages other than English, including why alerts are or are not provided in multiple languages. As part of our review, we are also considering how to encourage a more detailed and coordinated state/local emergency planning among state and local emergency response authorities and EAS Participants to reflect the ethnic and language diversity of our nation.

**2. Congress requires the FCC to report on market entry barriers every three years, but your latest Report to Congress – the Section 257 report – was due December 31, 2012 and is still forthcoming. Would you please explain this and share how the FCC will prioritize this as a process reform to ensure more diversity and inclusion in the media and telecom industries?**

Response: The Commission believes that the goal underlying Section 257 to promote diversity of ownership and opportunities for women and minorities to participate in the communications industry is an important part of our mission under the Communications Act. The Section 257 report is a compilation of actions and initiatives taken by each operating Bureau and Office in the agency to reduce or eliminate market-entry barriers faced by small and diverse businesses in the communications industry. In order to best serve the purposes of Section 257's reporting requirements, we sought to include several high-profile rulemakings and diversity initiatives undertaken by the agency in the latter part of the reporting period. Among these items were media ownership proceedings conducted by the Media Bureau which sought comment on how the Commission's ownership rules and policies can promote minority and women ownership of broadcast stations and how to define the term "eligible entity" for certain regulatory benefits to further the Commission's diversity goals.

The Section 257 report has also been undergoing a general review and assessment to determine what information is now outdated or needs clarification or updating by the relevant Bureaus and Offices, all of which resulted in further delay of the finalization of the Section 257 report.

Moreover, in addition to the overall review of the Section 257 report, the agency has decided to undertake a review and analysis of the process in which Section the 257 report is compiled and drafted with a view towards ensuring that the report serves the purposes of Section 257 in a meaningful way and is more efficiently coordinated throughout the agency.

**3. Two years ago I sent a letter to then FCC Chairman Julius Genachowski asking that the issue of activated FM chips in cellphone be examined. I also understand that you, Chairman Wheeler, are interested in this issue. What progress has been made to ensure my constituents have every tool at their disposal to receive lifesaving information in the event of another terrorist attack, power grid outage or a weather emergency?**

Response: Please be assured, one of the Commission's highest priorities is to ensure that all Americans can receive timely and accurate alerts, warnings, and critical information regarding disasters and other emergencies irrespective of what communications technologies they use. As we have learned from previous disasters, such a capability is essential so that Americans can take

appropriate action to protect their families and themselves. The addition of Wireless Emergency Alerts (WEA) enhances the reliability, resiliency, and security of our nation's alerting capability by providing for alerts to be distributed over a more diverse array of communications platforms, including mobile devices. Consistent with the Commission's well-established, flexible approach to technological requirements, I believe that mobile service providers and equipment manufacturers are in the best position to select and incorporate the technologies that will enable them to most effectively and efficiently deliver mobile alerts.

Importantly, Commission regulations do not prohibit activated FM chips in wireless handsets. I agree with you that FM chip sets can provide important benefits to consumers. I understand that there are already an increasing number of phones that include them, and, at least one major carrier has embraced the technology by providing FM radio access to its customers. At this point, it appears as though the issue may be resolving itself in the marketplace, which we will continue to monitor for further developments.

### **The Honorable Tony Cardenas**

**Chairman Wheeler, as you know from my communications with you, I strongly oppose the proposed merger between Comcast and Time Warner Cable. I stated last month that I believe the merger would be bad for consumers, harm competition, lead to less diverse content and more expensive cable and Internet access, and will eliminate good program-related jobs in my home state of California.**

**For Latino consumers, the merger will result in a near state of monopoly. In a post-merger world, over 90% of all Latino households will fall within television markets served by Comcast. The company will have control over the cable market in 18 of the top 25 Latino markets, including the major California markets of Los Angeles and San Francisco. In 16 of these markets, the merged company will dominate any competition.**

**A merged Comcast-Time Warner Cable will cover 84% of all of California. In some markets, the merged company will be the sole broadband provider and in many others, one of only two broadband providers. Comcast and Time Warner were ranked number 1 and number 2 for worst customer service by the University of Michigan's 2014 American Consumer Satisfaction Index. The market dominance of a merged company would destroy the free market ability that consumers should have to choose to leave a provider that mistreats them or provides substandard products and move to a competitor.**

**I could go on and on.**

**The point is, the combined Comcast-Time Warner Cable will not best serve the public interest. This merger, if granted, will reshape the media landscape by combining large players in cable, DBS, broadband and wireless/wireline services. I hope that by the end of this hearing, we learn from you how the FCC expects the media marketplace to look like in the near future.**

**I realize that you cannot comment on an ongoing merger review at the FCC. However, I believe that this Committee, in its oversight role, is able to hear how you approach such mergers and your vision for the media future in which these companies today play key roles:**

Response: On April 24, 2015, Comcast withdrew its application for approval of a \$45 billion dollar bid to acquire Time Warner Cable after Commission staff informed the companies of their serious concerns that the merger risks outweighed the benefits to the public interest. The proposed transaction would have posed an unacceptable risk to competition and innovation especially given the growing importance of high-speed broadband to online video and innovative new services. The Commission staff's collaboration with the Antitrust Division of the Department of Justice provided both agencies with a deeper understanding of the important issues of innovation and competition that the proposed transaction raised.

The FCC reviews every merger on its merits and determines whether it would be in the public interest. Central to that analysis is how American consumers would benefit if a proposed transaction were to be approved.

**1. You have stated publicly and the Commission has adopted language to the effect that 25Mbps/3Mbps is the threshold broadband speed required to support the best range of Internet applications, from HD video to video conferencing. Is this a metric you can or may consider in determining the applicable market for broadband in the merger context?**

Response: I agree with you that our evaluation of the Comcast-Time Warner Cable-Charter transactions warranted a careful review under our public interest standard.

You asked whether 25 Mbps /3 Mbps is a metric that the Commission can or may consider in determining the applicable market for broadband in the merger context. The Commission considers many issues when evaluating a merger, and conducts an intensive, fact-based analysis when determining what markets are impacted by a merger and how those markets should be defined. This analysis may, if appropriate, consider broadband speeds such as a 25 Mbps /3 Mbps metric.

However, this market analysis is only one piece of the Commission's broad standard of review, in which the Commission assesses whether the proposed transaction serves the public interest, convenience, and necessity. We have noted that our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets. But the public interest standard goes beyond that, and requires the Commission to consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.

In contrast to this merger review standard, in its 2015 *Broadband Progress Report* the Commission adopted a 25 Mbps /3 Mbps benchmark as the threshold for what is considered to be "advanced telecommunications capability" as that term is defined by Section 706 of the

Telecommunications Act of 1996 (the “Telecommunications Act”).<sup>1</sup> In the *Broadband Progress Report*, as required by Section 706 of the Telecommunications Act, the Commission examines the availability of “advanced telecommunications capability” to all Americans and determines whether such capability is being deployed to all Americans in a reasonable and timely fashion. Because the *Broadband Progress Report*’s 25 Mbps /3 Mbps benchmark determination was made outside of our review of a merger, such a determination may inform our merger review, but the Commission would not be bound by the benchmark finding.

**2. The FCC historically has said that a 30% market share is the most any competitor should control in the pay-TV market. Comcast has voluntarily proposed capping its national pay-TV market share at that level. I have seen information that the merged entities will reach over 90% of the households in which Latinos reside and as I mentioned, will control the cable market in 18 of the Top 25 Latino markets and will dominate 16 of those. Does the FCC view other dominant industry identified market as a category which a similar 30% threshold should apply?**

Response: As noted above, the proposed, Comcast-Time Warner transaction has been abandoned. Pursuant to statute, the Commission previously sought to set both horizontal and vertical concentration limits for cable systems. In 2001, the D.C. Circuit reversed and remanded a Commission order that had limited cable operators to 30% of all MVPD subscribers nationwide. In February 2008, in response to the remand, the Commission again issued an order setting a 30% horizontal ownership limit on the number of MVPD subscribers a cable television operator could serve nationwide. In August 2009, in *Comcast v. FCC* (No. 08-1114), the D.C. Circuit again vacated the horizontal ownership limit, without remand.

**3. The Internet Essentials program arose from the 2011 Comcast-NBC Universal merger. In turn, Time Warner Cable, at least in California, offers an inexpensive and fairly robust Internet service to a small number of low-income American homes. Recently, an Administrative Law Judge of the California PUC required that, were the merger to go through, Comcast offer a complete and comprehensive Internet Essentials service, including seniors. Will the FCC be considering the California action for application throughout the US?**

Response: Comcast’s Internet Essentials program, which was a condition of Comcast’s acquisition of NBCU in 2011, was developed by the company to increase broadband adoption in low-income homes throughout its service area. The program continues to be offered. Numerous commenters discussed the pros and cons of the program in the Comcast-Time Warner Cable-Charter proceeding. In the California Public Utility Commission’s evaluation of that same proceeding, an Administrative Law Judge required Comcast to offer a more comprehensive Internet Essentials program as a merger condition.

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<sup>1</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 (2015).

As to whether the Commission would consider the California action in its evaluation of the Comcast-Time Warner Cable-Charter proceeding, those companies submitted a letter to the Commission seeking to withdraw their applications on April 24, 2015. On April 29, the chiefs of the Wireline Competition Bureau, Media Bureau, International Bureau and Wireless Telecommunications Bureau granted their request. As a result, that merger is no longer before the Commission. However, I note that the Commission considers all record evidence in merger proceedings, even though it cannot comment on a specific issue while a merger is under review.

**4. Can you articulate your understanding of the public interest standard and whether it applies to the ability of pay-TV subscribers to have provided to them a high degree of variety in the programming offered by MVPDs? For example, does the public interest encompass the provision of content delivery providers offering independent, unaffiliated programming in both English and Spanish?**

Response: The FCC reviews every merger on its merits and determines whether it would be in the public interest. In applying the public interest test, an absence of harm is not sufficient. The Commission will look to see how American consumers would benefit if a deal were to be approved. Applications of the public interest standard depend on the specific facts of the proposed transaction before the Commission.