

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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June 1, 2015

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Chairman Wheeler:

Thank you for appearing before the Subcommittee on Communications and Technology on April 30, 2015, to testify at the hearing entitled "FCC Reauthorization: Improving Commission Transparency."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, June 15, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to [Charlotte.Savercool@mail.house.gov](mailto:Charlotte.Savercool@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden  
Chairman

Subcommittee on Communications and Technology

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

Attachments

## Attachment 1—Additional Questions for the Record

### 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?

### The Honorable Brett Guthrie

1. When you say that our bills would “create burden without concomitant benefit,” do you mean that they would burden the FCC without helping the FCC?

2. Do you think that stakeholders and the public at large would not benefit significantly from being able to review the text of the Orders and rules?

3. Do you think that stakeholders who cannot afford to have regulatory lawyers in Washington, D.C., should also have the same access that other stakeholders have?

### The Honorable Mike Pompeo

1. The commission has represented to Congress and the American people that it will “preserve the integrity of public safety communications infrastructure by taking action on 99% of complaints of interference to public safety communications within one day.” Yet this proposal seems to fly in the face of this statement and have a negative impact on the commission’s public interest goal.

- Will the closure of 16 of 24 field offices negatively affect the 99% response rate you have committed to preserve?

2. Your staff has indicated that these closures will lead to a reduction of 58 full time employees and that your FY16 budget request does not seek more FTEs and actually has a net reduction of 37 employees.

- Will you state for the record that the intent of closing these field offices was not to free up full time employee positions that could be shifted to increase staff within the enforcement division to carry out actions under your recent order to regulate the internet under Title II?
- Does your FY16 budget request reduce the total number of FCC full time employees by 58 positions in comparison to FY15?
- Can you state for the record today that there will be no staff increase to the enforcement division?
- I would also ask that you provide the committee all information on where the commission intends to move these 58 open positions.

3. Chairman Wheeler, 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."

- Does this mean that the Enforcement Bureau is investigating activities that are not clearly illegal?
- Is that a legitimate role for the bureau?

4. Do you believe that a designated entity should be able to use bidding credits to win spectrum at an auction and then lease 100% of that spectrum to a nationwide wireless carrier?

5. Did you circulate an order to your fellow Commissioners on the afternoon of November 10, 2014, regarding third-party access to sensitive programming contracts in the Comcast-Time Warner Cable and AT&T/DIRECTV merger proceedings and tell your fellow Commissioners that if they did not cast their votes by the end of that day, third parties would immediately be provided with access to those contracts?

6. Since you've become Chairman, have any Enforcement Bureau field agents been instructed not to give pirate radio cases a high priority or not to issue Notices of Apparent Liability to the majority of pirate radio operators?

7. Did the Tennessee General Assembly and Tennessee Senate pass by unanimous votes the geographic restrictions on broadband projects by municipal Tennessee utilities that the FCC recently preempted on a party-line vote?

8. Did the FCC recently preempt a provision of North Carolina law requiring a city's voters to approve the construction of a municipal broadband project if such a project would cause a city to incur debt?

9. Under your chairmanship, have there been more party-line votes at FCC meetings than there were under Chairmen Martin, Capps, Genachowski, and Clyburn combined?

10. Have there been any instances during your Chairmanship when two or more commissioners have asked that you give all Commissioners an opportunity to cast an up or down vote on an item but you chose instead to direct a bureau to release the item?

### **The Honorable Frank Pallone**

1. At the April 30 hearing you were asked about a final consultants' report related to the closing of several FCC field offices. When did you first provide this report to the Committee?

2. I would like to clarify a statement you made in regard to the FCC's designated entity rules. Do current rules permit designated entities who are awarded bidding credits to lease 100% of spectrum won at auction? What changes, if any, is the FCC considering to these rules?

## **Attachment 2—Member Requests for the Record**

*During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.*

### **The Honorable Mike Pompeo**

1. I, along with Chairman Upton, subcommittee Chairman Walden and Murphy, requested all internal and external FCC documents be provided about that decision to shutter 16 of the Commission's 24 field offices. We are now a couple of months after our initial requests. All we have received is a 2-page memo and 25 slides. Will you provide the committee those documents?
2. Did you hold a competitive bidding process to select the consultants who analyzed the Enforcement Bureau's field offices and produced the report that recommended closing most of those offices?
3. On March 11, 2014, there was a Public Safety and Homeland Security Bureau release. A public notice to commissioners requested a Commission-level vote on the item and you instead directed the bureau to release that. It is my understanding that this is unprecedented, that that had not happened before, when one or more Commissions had asked for a Commission-level vote and yet hadn't received one. I would appreciate you providing the examples when that has happened previously because we were unable to find them.

### **The Honorable Billy Long**

1. Please provide the Subcommittee with the costs for the Chicago field office square foot per employee.

### **The Honorable Bill Johnson**

1. You have testified as part of your claim that things are improving at the FCC, that the enforcement bureau closed nearly 8,000 cases. Now, that gives me some pause because that seems like a big number. Were they closed because the FCC took enforcement action? Were they closed because the Statute of Limitations ran out and you couldn't take action? What are the numbers for those actions closed by positive FCC actions versus the ones closed by the statute of limitations running out? Were any of them closed because the enforcement bureau just said "never mind"?
2. Can you provide us with a detailed analysis of the nearly 8,000 cases, identifying the type of alleged violation, the type of action taken, if any, and the reason that you closed the case?
3. Chairman Wheeler, in a response to one of our inquiries regarding process and delegated authority you told us that a Bureau or Office may seek guidance from your office on whether an item should be votes on by the full Commission even when it was within the scope of the Bureau or Office's delegated authority.

- Does the reverse ring true? When a Bureau or Office opines that an action should be done at the Commission level can the Chairman's office direct that it be done at the Bureau level anyway?
- Since the decision to use delegated authority is a legal one – shouldn't the Bureaus and Offices go directly to the General Counsel's office rather than your office for guidance?

4. Mr. Wheeler, in response to one of our committee's inquiries, you provided us with the information regarding the number of enforcement actions taken by the field and the number of enforcement actions overall. For example, in 2011, 88 percent of the actions were taken by the field. In 2012, 76 percent of the enforcement actions were taken by the field. In 2013, 89 percent of the actions were taken by the field.

So let me get this right. You want to close more than half of the field offices. Just looking at the impact in terms of bureau productivity, how do you intend to continue that level of enforcement activity from the few remaining offices? If I were to read between the lines, aren't you really talking about a wholesale retreat from the type of enforcement actions undertaken by the field like interference resolution and abandonment of the proactive enforcement work the field performs like tower inspections? And are the staff slots that are being opened by releasing the field staff from Federal service being moved to FCC headquarters? And I know you probably don't have off the top of your head the answer to all those questions, but could you update the committee and provide this type of data for fiscal year 2014 as well?