

**RESPONSES OF FCC COMMISSIONER AJIT PAI TO QUESTIONS FOR THE RECORD  
FROM THE JULY 28, 2015 HEARING OF THE SUBCOMMITTEE ON COMMUNICATIONS  
AND TECHNOLOGY OF THE HOUSE ENERGY AND COMMERCE COMMITTEE**

**The Honorable Marsha Blackburn**

**Q: I signed bi-partisan letters to the FCC in 2013 and May 2015 to stress the importance of wireless microphones to the performing arts and to adopt rules that “preserve the quality and integrity of wireless microphones” as the FCC works to implement spectrum auctions. The FCC agreed to place wireless microphones in the duplex gap between the uplink and downlink pieces of the new 600 MHz band along with unlicensed users.**

**Last month the FCC was planning to vote on an order that would have taken away what little spectrum was going to be made available after the auction for wireless microphones in the new duplex gap by placing a broadcast station there. I appreciate that the Chairman withdrew this order, however I’m curious as to what the current plan is to make sure that wireless microphone users have dedicated spectrum?**

A: While the Chairman withdrew an order that would have placed broadcasters in the 600 MHz band duplex gap from consideration at the FCC’s July meeting, he placed that order (FCC 15-78) on the Commission’s August agenda. So on August 6, the FCC voted 3-2, with me and Commissioner Michael O’Rielly dissenting, to allow broadcasters to be placed in the duplex gap. Commissioner O’Rielly and I were far from alone in opposing that decision. Broadcasters, wireless carriers, and unlicensed advocates all criticized the decision. And while the Commission adopted the order on a party-line vote, this isn’t a partisan issue. For example, Democratic Senators Blumenthal, Booker, Leahy, Schumer, and Wyden, not to mention New York City Mayor Bill de Blasio, all expressed serious concern to the Commission about placing television stations in the duplex gap. But the Commission ignored that chorus and barreled ahead anyway.

In my view, wireless microphones serve important purposes. They enable broadcasters and other video programmers to meet the needs of consumers by covering breaking news and other live events. And they are critical tools for businesses and productions across the country. On August 5, 2015, the FCC adopted an order (FCC 15-100) that made a number of changes to our rules that are intended to help wireless microphones take advantage of additional spectrum bands.

**The Honorable Leonard Lance**

**Q: The FCC has announced that they plan on taking on consumer privacy issues in the fall. In my opinion, looking at recent enforcement actions, the FCC has had a hard time staying in the bounds of the statute on privacy issues. For example, in a recent enforcement action the Commission issued fines for a company that failed to protect consumer privacy for personal information from being released. But the Communications Act doesn’t grant authority to the FCC to protect consumer privacy for personal information, only customer proprietary network information. Commissioner Pai, do you believe that the Enforcement Bureau has the authority to be the country’s privacy police?**

A: I share your concerns. In a recent Notice of Apparent Liability (NAL), from which Commissioner O’Rielly and I dissented, the Commission proposed to impose large forfeitures against two companies for failing to adequately protect personally identifiable information (PII), even though the Commission had never before interpreted the Communications Act to impose an enforceable duty on carriers to protect PII and had never adopted rules regarding the misappropriation, breach, or unlawful disclosure of PII. Instead, as your question indicates, the Commission’s enforcement activity and rules in the area of privacy had been limited by law and practice to customer proprietary network information, a much narrower category of information than PII. The Commission’s NAL, in my judgment, was thus unlawful and fundamentally at odds with due process.

Prior to the Commission’s Title II order earlier this year classifying broadband service providers as telecommunications carriers, the Federal Trade Commission, which has substantial experience in the area of privacy, had the authority to police broadband providers’ privacy practices. But the FCC’s Title II order, which recast Internet service providers as common carriers, divested the FTC of that jurisdiction under the latter agency’s common-carrier exemption. In my view, the FCC made a serious mistake. The FTC has substantial and broader experience in the area of privacy than does the FCC. Moreover, I believe that broadband providers and edge providers should be governed by consistent privacy standards. Now, however, when it comes to privacy, broadband providers will be regulated by the FCC and edge providers will be regulated by the FTC. This disparate treatment could yield marketplace distortions that will not benefit consumers and inappropriately tilt the playing field for businesses.