

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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May 12, 2016

The Honorable Ajit Pai  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Commissioner Pai:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, March 22, 2016, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

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.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Thursday, May 26, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Greg.Watson@mail.house.gov](mailto:Greg.Watson@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 G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

## Attachment—Additional Questions for the Record

### The Honorable Steve Scalise

1. Do you think the FCC has the statutory authority to expand the scope of the definition of Customer Proprietary Network Information to include all of the elements proposed in the privacy NPRM?
2. I am concerned about the FCC's set-top box proposal in relation to content and copyright protections. I understand the NPRM does not address the path for the three streams that MVPDs must deliver to third parties. Strong authentication in relation to any path is imperative to the protection of content. What is the FCC's proposal on how user authentication will occur? Specifically, where in the NPRM does it address user authentication?
3. As you are aware, prior to the FCC's Open Internet Order, ISPs were subject to the FTC's oversight with respect to their privacy practices. Do you believe that consumers' privacy rights were adequately protected during that time? If not, please provide specific examples where consumers' privacy rights were being violated without action by the FTC to remedy the situation.
4. Yes or no – do you think it makes sense to bifurcate oversight of the privacy practices of the Internet ecosystem between the FTC and the FCC? If no, which agency should have sole jurisdiction over this issue?
5. Do you think consumers expect different privacy rules to apply depending on the type of entity collecting their information online rather than the type of information being collected and the intended use of such information? If so, upon what do you base that conclusion?

### The Honorable Brett Guthrie

1. You stated at a recent Appropriations hearing that you believe upcoming spectrum auctions can be accomplished within existing budgets and that the Commission does not require new funding to achieve these objectives. Do you continue to believe that's the case, and if so could you elaborate?
2. I am concerned that the new set-top box proposal is short-sighted and could potentially hamper long term growth and innovation in the content and video marketplace. I am also concerned that the agency is racing toward premature standardization in this rapidly growing and robust technological area. Do you share these concerns, and can you comment on whether, if we follow the path proposed by the Chairman, we may be foreclosing competing approaches and ultimately harming innovation?

## The Honorable Mike Pompeo

1. On June 18, 2015, the commission adopted a new TCPA Order that many, who are governed by the law, believe will increase the potential for liability. For example, the reassigned phone number issue does not allow a company to rely on the owner's prior consent to avoid TCPA liability. Companies will now need to develop procedures to avoid strict liability for contacting reassigned numbers.
  - a. Can you explain the rationale behind this and why the commission believes that it is the responsibility for companies to use a private commercial database, one that is only accurate 80% of the time, to track reassigned numbers?
  - b. Do you believe that this additional regulatory burden should be shouldered by companies?
2. Prior to the June 18, 2015 TCPA Order the Commission's interpretation of autodialer, required that equipment be able to dial telephone numbers without human input. Following the Order, it appears that the decision as to what constitutes an autodialer will be made on a case-by-case basis. It would appear that the FCC is adding to the burdens of individuals and businesses by clouding the autodialer issue rather than clarifying. As you know, this is one of the many reasons why we have seen so many lawsuits on this very issue.
  - a. Can you inform the committee as to why the commission adopted this new interpretation and why the change was necessary?
  - b. Can you tell the committee whether the impact of the new TCPA Order on specific industries, such as healthcare, was contemplated before making the change what specific issues these industries may face under the new Order the commission considered?
3. As you are aware, there are a number of petitions before the commission regarding the July 18, 2015 TCPA Order. When can the committee expect the commission to resolve these petitions?
4. The 2015 TCPA Order rejected the use of prior business relationships as a test regarding prior express written consent? What was the rationale for this change and what work has the Commission done to measure the impact the change will have on American businesses?
5. Can you explain to the committee the timeline for developing the new regulations required as a result of Section 301(b) of the Bipartisan Budget Act of 2015?
6. The bipartisan letter sent to Chairman Wheeler on November 17, 2015, requested that the FCC work closely with the Consumer Financial Protection Bureau to develop a coordinated approach on the limited number of calls permitted under Section 301 of the

Bipartisan Budget Act of 2015. Has the commission done what the letter requested? If not, why the delay?

7. The FCC is currently receiving comments on a proposal to impose new privacy regulations on broadband Internet service providers that will not apply to so-called “edge” providers. The FTC currently oversees a successful program to ensure consumer privacy is protected online that, until the Open Internet Order, applied to both access and edge providers.
  - a. Given the disparity between what the FCC has proposed and the FTC’s existing regime to ensure online privacy, please provide analysis demonstrating that the Commission has considered whether its imposition of new rules will create confusion for Internet users.
  - b. What impact would application of the FCC’s proposed rules to edge providers have on the products and innovations that consumers currently enjoy? Please provide specific examples of popular services that would remain free from impact if the proposed rules were applied to them as well as services that would be impacted.
8. Moody’s Investors Services recently reported that the FCC’s proposed rules will disadvantage ISPs as they seek to compete with other digital advertisers. Do you acknowledge that the FCC’s rules will amount to the FCC picking winners and losers in the digital advertising marketplace? If not, how do you explain Moody’s reaction to the FCC’s proposal?
9. The Chairman's proposal regarding set top boxes raises many questions on who is ultimately liable for security issues. Under this proposal, any third party box manufacturer – including manufacturers from North Korea, Iran, Russia or China – can self-certify and then offer boxes to US consumers with links used to infect consumers in the United States with malware.
  - a. If those boxes contain malware or pose other security issues, who is ultimately liable to the consumer for losses?
10. Commissioner Pai, Congress passed a law last year that said all JSAs are grandfathered for 10 years. In February, as part of a license transfer of TV broadcasters, the FCC forced the company buying the new stations to get rid of the JSAs being operated by the company being bought. Chairman Wheeler has said that this fits with the Commission’s precedents on what happens to grandfathered media properties.
  - a. My question is: aren’t all of the precedents sighted by the Chairman to get rid of JSAs simply the Commission getting rid of grandfathered entities that they (the commission) had previously granted? This grandfathered protection, for JSAs, that is being done away with is inherently different because Congress, not the FCC, granted it. Can you give me an example where Congress has explicitly stated that one thing should happen, in this case the 10 year grandfathering of

JSAs, and the FCC has done the exact opposite? Are there any examples where a law passed by Congress is superseded by a precedent of the FCC?

**The Honorable Chris Collins**

1. I want to understand the timetable the set top box proposal contemplates. The Commission has proposed that MVPDs comply with new rules within two years after adoption. That would include time for independent standards bodies to come up with new standards, *plus* the time for the testing of those standards, *plus* the time to design and develop devices or apps and redesign of MVPD networks to act on those standards.
  - a. Given the history of video-related standards and the length of time they typically take to develop, can you explain what evidence the FCC looked at to decide that two years would be sufficient time for all of those steps to happen? Did they even ask engineers if this was plausible?
  - b. Does the Commission's set-top box NPRM call for the adoption of the "Google" standard if one isn't written in time? What incentive would there be for one side to negotiate a standard if they just have to wait out the process to get their way?

**The Honorable Kevin Cramer**

1. Commissioner Pai, I want to express deep concern over the set top box NPRM and its implementation of the AllVid approach. It severely harms copyright and content providers by forcing their product to be handed over without their consent. It also forces an MVPD to hand over viewing data without the consumers consent and allows a 3<sup>rd</sup> party device to use that data without consent. That is a huge mistake. I am also particularly concerned with smaller rural providers. Can you please explain how the commission plans to address the burden these rules may have on smaller video providers?