

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 Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Commissioner Rosenworcel:

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.

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 John Shimkus

1. Commissioner Rosenworcel, you have expressed concerns about the best way to implement and enforce the certification process outlined in the Chairman's set-top box proposal. I share your concerns. At this week's Senate Appropriations hearing, Chairman Wheeler expressed opposition to the self-certification process with Lifeline citing specific misuses, including fraud. Self-certifications in the context of the set-top proposal have much broader, potentially very harmful consequences for consumers. How can the Commission reconcile rejecting self-certifications in one context, while advocating for them in another?

The Honorable Steve Scalise

1. 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.
2. 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?
3. 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 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?

The Honorable David Loeb sack

1. I would like to talk about small providers. Commissioner Rosenworcel, when the Commission adopted its Notice of Proposed Rulemaking on set-top boxes, you said "this rulemaking is complicated," "important questions have been raised about copyright, privacy, diversity – and a whole host of other issues," and "*more work needs to be done to streamline this proposal.*" Nevertheless, the Commission only provided 30 days for interested parties to comment and 30 days for reply comments (both measured from Federal register publication) an unusually short comment period for issues such as these. As the American Cable Association, which represents small cable operators, has said in asking for an additional 30 days to provide comments, "The NPRM includes 150 question marks, 87 recitations of the phrase "seek comment" and numerous other statements that invite or warrant comment on scores of particulars of the NPRM's undeniably 'complicated' proposals." The FCC Media Bureau granted a mere seven-day extension for comments saying "we are committed to resolving the issues raised ... in a timely manner."
 - a. Commissioner, consistent with your previous statements about the need to streamline this complex proceeding, wouldn't the issuance of a *Further* Notice of Proposed Rulemaking focusing on a *streamlined* proposal be more appropriate once the current comment cycle is done in May, rather than jumping to a final set of rules on which comment will by necessity have been limited?

The Honorable Ben Ray Luján

1. Currently more than 30 percent of New Mexico's schools lack access to high-speed Internet. You and I both agree that this is a problem. To achieve a true 21st century education, students must learn vital digital skills and must have access to the modern learning tools that increasingly make school blackboards obsolete.

Last fall, my home state, working with EducationSuperHighway, announced a plan to make high-speed Internet available to every New Mexico classroom by 2018. To meet

this goal, the state will combine \$49 million in state funding along with additional funding from the E-Rate program.

- a. I know that you're extremely proud of the Commission's efforts to modernize E-Rate, which included increasing funding for this program by \$1.5 billion annually. Can you discuss what these reforms mean to states like New Mexico that are working to connect more schools?
2. According to the FCC, 34 million Americans lack access to high-speed broadband. This includes forty percent of people living in rural communities and 80 percent on Tribal lands. In my home state of New Mexico, those numbers are 61 percent and 80 percent.

In your testimony, you discuss how this digital divide harms students. You note that "roughly seven in ten teachers assign homework that requires access to broadband." But for students without access to broadband, "just getting homework done is hard." I completely agree. In an age where connectivity is the key to opportunities and economic success, we cannot allow millions of students to be cut off.

- a. What is the FCC doing to bridge this digital divide and what can we be doing here in Congress to ensure that every student has the opportunity to succeed?