

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 Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Wheeler:

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.

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 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

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Greg Walden

1. When you appeared before the Senate recently there were concerns raised about the effectiveness of the Do-Not-Call list. Prior to the revamp of your consumer complaint portal the FCC reported TCPA complaints in its quarterly complaint report on a granular level but now it appears Do-Not-Call complaints are aggregated with other TCPA complaints. Why did the FCC stop disclosing separately the number of Do-Not-Call complaints the agency receives from consumers public?

The Honorable Fred Upton

1. Chairman Wheeler, notwithstanding several recent Commission actions including a Report and Order and enforcement actions that have resulted in settlements, call completion issues continue particularly impacting consumers in rural areas like my constituents in Southwest Michigan. Given that these problems persist, clearly the FCC needs to do more. What further actions do you have planned to address this issue? Please provide a timeline.

The Honorable John Shimkus

1. Chairman Wheeler, the last time you appeared before this Committee, I described the ongoing call completion issues that continue to plague my constituents, particularly those in rural areas. We need to stop this problem once and for all. In your response to me then, you said that the problem was caused by "the intermediate carrier, and it's a failure on the part of the major carriers to police their subcontractors." And I know that you said you are enforcing the existing rules. But, despite a final report and order, an order on reconsideration, an Enforcement advisory, and recent settlements, the problem continues to plague the industry and harm constituents. What more can the FCC do to target these fraudulent intermediate carriers and create incentives for major carriers to assist in the efforts to police fraud in the industry?
2. Why can't the FCC conduct its own investigations into whether the carriers are in fact policing their intermediate carriers? Even if there is a chain of carriers involved in handling telephone calls, each carrier should know the identity of the carriers to whom it passes all of its calls.
3. Have you sent, or are you planning to send, Letters of Inquiry to service providers which have originated calls that may have been impacted by fraud? If not, why not?
4. Chairman Wheeler, you testified that Google Chrome does not violate copyright or overlay commercials, and the NPRM states that it does not believe it is necessary to propose any rules to address overlaying or replacing commercials. The cable industry

reported to the FCC (on January 21, 2016) that the CableCARD license “has not stopped TiVo from overlaying ads on top of broadcast signals carried on cable or streaming signals out of the home without license.” Now that the NPRM proposes opening up all subscription and premium content from all MVPDs to third parties, the Commission needs to be very clear on what practices it would allow or forbid. Would you agree that overlaying unauthorized advertising is contrary to the “disrupt, impede or impair” language you are suggesting? In the set top box proposal, what specifically would *prevent* third party devices or apps from substituting ads or adding unapproved or additional advertising alongside Pay TV content or alongside search results?

The Honorable Marsha Blackburn

1. The Sweetwater Consortium filed a waiver request with the Commission in 2012, after USAC provided the Consortium with guidance on the procurement and application requirements. Can you provide a status update on the waiver request?
2. The December 2014 Second Report and Order directed USAC to analyze “how its administration of the program can further the goal of maximizing the cost-effectiveness of E-rate supported purchases. For example, USAC should analyze its approach to cost-effectiveness reviews, and find ways to share information with applicants and vendors about its approach to such reviews, in order to encourage cost-effective purchasing by applicants.” (Para. 126) Has USAC conducted this analysis? If so, has it shared the analysis with applicants? Please describe how and when that has occurred.
3. The December 2014 Second Report and Order also directed USAC to explore ways in which to assist schools and libraries to receive technical assistance. (Para. 127) The Commission also directed USAC to develop best practices and supporting technical information. Please describe USAC’s efforts to meet these directives and when such programs were implemented.
4. If USAC is going to change the review of each competitive bidding process to a merits review (that is, deciding if the bid evaluators gave the right amount of points for each category for each vendor), how do you expect the E-rate program to function, especially if districts must wait years before they learn if USAC has approved their evaluation process and vendor selection?

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 Brett Guthrie

1. After the broadcast incentive auction, am I correct in assuming you will have an auction for the AWS-3 licenses returned by DISH and its partners? What, if anything, does the Commission still need to do to bring those licenses to auction, and what is your best estimate for the approximate timing of that auction?
2. When it comes to AWS-3, auction activity related to the 3.5 GHz band, and the high-band auction or auctions flowing from work on the Spectrum Frontiers proceeding, what can we expect in terms of the order of events? For example, do you expect the order to be AWS-3, then 3.5, then high-band? And over what interval do you think that the Commission might accomplish this – is it a one-year effort, or a three-year effort, etc.?
3. Given the complexity of the Incentive Auction now underway and specifically the challenges posed by the 39-month window for implementation, how is the Commission planning to meet this challenge and in particular what role might a third party transition administrator play? Further, what steps are being taken to instill confidence that the Commission will devote adequate resources to the implementation phase?

The Honorable Pete Olson

1. Georgia Tech Scheller College of Business Professor Peter Swire concluded that search engines, websites, operating systems, and social media collect a substantial amount of sensitive personal information from consumers, information to which ISPs do not even have access. Yes or no - Do you dispute Professor Swire's conclusions that edge providers collect more sensitive information than ISPs?
2. How does the FCC plan to ensure that whatever rules it develops are consistent with the successful FTC approach that is grounded on the concepts of unfairness and deception, but that provides flexibility with respect to compliance rather than prescriptive rules?
3. The FCC's privacy fact sheet asserts that "Consumers have the right to exercise meaningful and informed control over what personal data their broadband provider uses and under what circumstances it shares their personal information with third parties or affiliated companies." Putting aside what you perceive as the scope of the FCC's

jurisdiction, do you think that "right" should apply with respect to all companies in the Internet ecosystem or just ISPs?

4. In your testimony, you said that a third-party device manufacturer under the STB proposal would have to make the same kind of privacy assurances as cable and satellite companies get when they work with Roku and TiVo, and that cable operators would determine whether or not there was a privacy violation.

The STB proposal says that retail devices must “have no business relationship with any MVPD” and that they must provide “information flows” to the retail devices without using the apps that cable and satellite companies provide to companies like Roku. If no business agreement or app is allowed, how will self-certification by third parties under the STB proposal provide cable and satellite companies with the same kind of enforceable privacy assurances as those used with Roku?

5. Regarding the CAF II auction for awarding support in rural areas historically served by larger carriers, how will you balance the need for robust competition in the auction with the Communications Act standard of reasonably-comparable networks in urban and rural areas? What standards will be in place to ensure that auction winners are equipped to offer reliable voice and high-speed broadband that can be efficiently upgraded over time to keep pace with consumer needs?

The Honorable Mike Pompeo

1. Chairman Wheeler, a couple of years ago, you and Commissioner Pai testified in an appropriations hearing and the issues of Joint Sales Agreements came up. Commissioner Pai referenced specifically a local television station that was providing our state’s only Spanish language news and reporting and it could only happen because they were a partner in a JSA. Commissioner Pai was very concerned that a forthcoming rule the Commission was then considering would force that station off the air. You told the Appropriations Committee that was not the intent of the rule and that the good actors, like this station, would not be affected. In March of that year, you voted out the rule and sure enough, our Wichita JSA was impacted and would have been forced off the air. Congress stepped in and saved JSAs, effectively overturning that FCC rule, last December. Then I found out that last month, because the owner of the Spanish language station’s partner in the JSA was changing, you are once again forcing the JSA to be unwound, even though the law we passed allows for changes in ownership of the JSA.
 - a. It’s obvious to me that this partnership is beneficial. What is the reason that your FCC keeps targeting it and others?
2. 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?
3. 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?
4. 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?
5. 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?
6. 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?
7. 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?
8. 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.
9. 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 Gus Bilirakis

1. We have talked a lot about the closing of FCC Field offices and the impact on protecting public safety communications. You have told us repeatedly that you would maintain the standard to take action within one day of receiving a complaint regarding interference to public safety communications. In response to an early inquiry I was surprised to learn that "taking action" means that the FCC sends an email to the complainant alerting them that the FCC is aware of the complaint not that the interference has been resolved.
 - a. When I asked how long it normally takes to resolve the interference I was told that the FCC does not track that information in a searchable field in the enforcement bureau's data base and that the staff would have to sort through the data by hand. Isn't that one of the most important data points for purposes of assessing the performance of the FCC's enforcement activities? How can we get a measure on how well the FCC is doing to protect public safety communications?
 - b. A consultant advised on the field office closings. How much did the FCC pay them in total? Does the FCC currently have them under contract for any other purposes? If so explain.
 - c. When the consultant made the recommendation regarding the field offices, did the consultant go through the FCC's records manually? How many years' worth of enforcement bureau data was reviewed in the analysis underlying the recommendation? As a result of this analysis would the consultant know how long

it takes to resolve a public safety interference complaint? If so, could you provide the data?

2. I wish to seek clarification and transparency around an issue which has been raised to my attention stemming from a recent Order (FCC 15-72) issued by the Commission in July 2015.

The Order of concern recognized that health care providers – such as physician offices, hospitals, and pharmacies – may make health care related telephone and text communications to individuals who consented to receive them. These entities aren't the only entities that have made a common practice of sending health care related telephone and text communications to individuals under the protection of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

As a result, the application of the Order has caused uncertainty among health plans, and brought into question their ability to continue to make important health care communications which serve as a core function of managed care arrangements today.

- a. At the time of the July order, were the individuals who drafted the FCC Order aware that health plans routinely communicate with their enrollees in much the same way as was recognized for health care providers under the exemption?
- b. Was it the intent of the FCC to use the term "health care providers" interchangeably with the HIPAA definition of "covered entity" and "business associate"?
- c. To ensure expediency, can the Bureau clarify the July order to clearly allow health plans, and other covered entities, to continue to make these important communications?
- d. When is the earliest date that a clarification can be expected?

The Honorable Bill Johnson

1. Does each individual commissioner's office, including that of the Chairman's, have a budget for travel? If so, what is the limit that each office is supposed to spend on travel?
2. Is the per commissioner office limit referenced in question 1 the only source of funding for commissioner and staff travel? For instance, do any Bureaus pay for commissioner or commissioner staff travel?
3. What happens if that budget is exceeded? And what internal safeguards are in place to ensure that the limit is not exceeded?
4. Following your testimony before the Subcommittee last July, the Commission supplied us with data on travel spending by each of the commissioners. First, since that

information did not include data for all of FY15, will you commit to supplement that answer with full year data for FY15? Second, to the extent that there are any other sources that support commissioner travel, please detail any additional amounts spent to support commissioner travel, broken down by commissioner.

5. We have taken a look at the Commission's aggregate travel expenditures over the course of your tenure at the FCC. Since the beginning of FY14, agency expenditures on travel have risen by nearly 50 percent. What is the justification for this very rapid rate of growth? And why shouldn't we work with our colleagues at the Appropriations Committee to cut travel spending back to a more reasonable level?
6. On your watch, average personnel costs for employees in the Enforcement Bureau have grown faster than was the case under Chairman Genachowski. Certainly average salaries for those in the enforcement bureau have grown faster during your tenure than was the case under your predecessor. How do you explain this trend toward higher spending?
7. The FCC has, as a matter of practice, sent a contingent of enforcement bureau field agents to the Super Bowl. It is the job of these field agents to ensure that no harmful or malicious interference interrupts communications – broadcasting or public safety. Did the chief of the Enforcement Bureau attend the Super Bowl as part of the FCC's presence this year? Have any Enforcement Bureau chiefs attended the Super Bowl in the past? If the Enforcement Bureau Chief attended, explain what official duties the Bureau Chief performed and the number of hours these duties were performed. Provide a copy of the Bureau Chief's trip report. Provide a copy of the Bureau Chief's expense report for attending the Super Bowl. Provide a copy of the Bureau Chief's time and attendance report for the pay period during which the trip occurred.
8. The FCC's budget submission indicates that the FCC consolidated office space at the Portals by shutting down the office space rented for the Wireless Bureau. The FCC says it saved \$3 million in annual expenses for consolidating this office space. And yet your budget proposes to continue spending the same higher amount — about \$6 million — on rent for office space out of the auctions expense fund. Why hasn't the FCC reduced its planned auctions spending on rent for office space and passed these savings along?
9. In the crosswalk for the Spectrum Auctions Program, you allocate slightly more than \$59 million in auctions funding to the Office of the Managing Director. Can you please detail for the Subcommittee how the auctions program would account for such a large portion of OMD's FY17 cost?
10. Spectrum Auction Program spending on "Other services from non-Federal sources" has increased from \$10.9 million in FY14, your first year at the FCC, to a projected \$26.7 million in FY17. Please detail the reasons for this growth.
11. Every year, the FCC is supposed to submit to Congress a detailed report on auctions expenses, as required by Section 309(j) of the Communications Act. Unfortunately, the FCC doesn't make the auctions expense report publicly available. Also, the FCC submits it to Congress about a year after the close of the fiscal year, which is so late it undermines

much of the usefulness of the report. Will you commit to publishing the FCC's auctions expense report so the public can see exactly how the FCC uses the auctions expense money? And will you provide for the record the FCC's auctions expense reports for 2013, 2014, and 2015?

12. A fundamental premise of Chairman Wheeler's privacy proposal seems to be that, even in an encrypted environment, ISPs can see what website a consumer accesses. But can the ISP see the pages/content on that website that the consumer accesses? For example, an ISP may know that a consumer has visited a health website, but does the ISP know the content on that website that was viewed or the questions that a consumer may be asking while on a particular webpage?
13. Chairman Wheeler, in a recent op-ed in the Huffington Post, you stated that "[w]e all know that the social media we join and the websites we visit collect our personal information, and use it for advertising purposes. Seldom, however, do we stop to realize that our Internet Service Provider (ISP) is also collecting information about us."
 - a. On what basis have you reached this conclusion? Most consumers have little idea about the information that social media and websites collect about them. Has the FCC done research that demonstrates otherwise? If so, please provide such information to the committee.
14. Have you familiarized yourself with Peter Swire's recent paper on the data collection practices of ISPs and other companies in the Internet ecosystem? Professor Swire concludes that ISPs could not collect an increasing amount of data about consumers' online activities because so much traffic is encrypted (a trend that continues to grow) and flowing through virtual private networks. In addition, consumers now access the Internet from multiple ISPs throughout the course of the day, limiting how much any one ISP sees on a daily basis.
 - a. Yes or no - Do you disagree with Professor Swire's findings?
15. Chairman Wheeler, please respond specifically to some of the concerns brought up in the Wall Street Journal article, "Government by Google", attached to this letter, regarding the proposed rule to impose a new FCC set top box technical mandate.

The Honorable Renee Ellmers

1. Chairman Wheeler, in your testimony, you suggested that the cable or satellite provider could stop doing business with the box if a third party violates privacy—that is, turn off the flow of cable or satellite programming to the third party box. Doesn't that punish the consumer for a privacy violation by the box manufacturer? Would the consumer even know who to call to get a refund on a box that doesn't perform the functions it was purchased for?

The Honorable Chris Collins

1. Chairman Wheeler, I noticed that during your recent budget testimony before the House Appropriations Committee that funds will be used to map capabilities in regard to the upcoming Mobility Fund Phase II. Can you clarify how the FCC's data will be improved?
2. Chairman Wheeler's privacy proposal would require ISPs to obtain opt-in consent to share consumer information with third parties. Do any other companies in the Internet ecosystem have such a requirement? Should other companies in the Internet ecosystem have such a requirement?
3. Should the FTC impose the same requirements on other companies in the Internet ecosystem that the FCC imposes on ISPs?
4. In a recent Huffington Post op-ed, Chairman Wheeler asserted that states and the FTC "do a great job dealing with [edge providers] and their privacy practices." If states and the FTC do such a great job dealing with these entities and their privacy practices, shouldn't the FCC replicate their approach with respect to ISPs?
5. Based on information provided in speeches by Commissioner Pai, it appears that instructions were given to reduce the efforts to enforce against pirate radio stations. This instruction seems to coincide with an overall decline in pirate radio enforcement. Apart from the email referenced by Commissioner Pai, were instructions given either orally or in writing. Please provide the names of the individuals responsible for giving such an instruction and the individuals who received the instruction.
6. The Commission's approach to pirate radio enforcement indicates that it wanted to focus on public safety issues. At the same time the FCC most recent Enforcement advisory states that pirate radio stations interfere with EAS alerts. Does interference to EAS qualify as a public safety issue?
7. In the FCC FY 2017 budget request, the number of FTE's will decrease. In 2015 the Number of FTE's in the Enforcement Bureau was 252. The FY 2017 budget request lists the number of FTE's for the Enforcement Bureau at 211. Please explain how the proposed declines in Enforcement Bureau employees will help increase pirate radio enforcement.
8. How many attorneys are currently assigned to prepare cases and enforcement actions against pirate radio operators in the AM and FM band? Are these attorneys located at the FCC's headquarters in Washington or at some other location? Will the number of attorneys preparing such enforcement actions increase or decrease in 2016.
9. Please provide the following information with respect to pirate radio enforcement in the AM and FM bands:

	2012	2013	2014	2015	2016
Number of NOUOS Issued					
Number of NALs Issued					
Number of Forfeiture Orders					
Number of Equipment Seizures					

10. Please indicate the number of Enforcement Bureau employees working in the New York filed office in 2012, 2013, 2014, 2015 and in 2016? Do you plan to increase the number of personal devoted to pirate enforcement in those areas with high pirate operations such as New York City and Miami.

11. The FCC has indicated that it intends on has shifted its pirate enforcement approach “to focus on the worst actors -- pirates that are repeat offenders that cause interference to licensed broadcasters, that run advertisements and that operate at high power.”

- a. Using these criteria, of the total number of pirates operation today, what percentage would be considered to be “the worst actors” and therefore subject to greater enforcement scrutiny by the FCC? For example in New York City every pirate radio station on the air is operating in contravention of the FCC’s engineering rules with respect to power, and by the FCC’s own rules is causing interference to licensed stations. This includes EAS alerts. Moreover most pirate stations sell advertising. In this regard, it has been estimated that there may be more than 100 illegal pirate operations throughout the New York City Metropolitan area. Using you new approach would the FCC focus on 5%, 10%, or 25% of all pirate stations? What percentage of pirate operators fit your criteria for action?

12. At the last oversight hearing, I asked whether the FCC ever examined pirate operations for RF radiation emissions. Your response indicated that the FCC is taking the pirates off the air. To be direct – does the FCC examine pirate operations for RF radiation emissions? If not, why not? If you do not, then how can the FCC properly determine which pirates pose a threat to public health and safety?

The Honorable Kevin Cramer

1. Chairman Wheeler, according to former Clinton Administration privacy expert Peter Swire, the rise of encryption protocols such as HTTPS has tremendously reduced the

amount of information available to be accessed by Internet service providers (ISPs). With 42 of the top 50 websites now using default encryption, and with 70 percent of all Internet traffic expected to be encrypted by the end of 2016, do you believe ISPs have greater access to user data information than edge providers?

2. Chairman Wheeler, I understand that a lot of robocalls or automated text messages are an unwelcome part of modern life and should be limited, as they are now under the Telephone Consumer Protection Act (TCPA). But in some cases, customers have a legitimate need—and a real desire—to receive important information from some businesses. For example, utilities may need to contact their customers with information about outages, repairs, service restoration or other important service updates. This is especially true in situations like what we face in North Dakota when we have a severe weather such as tornados. My understanding is that there is a petition from electric and gas utilities currently pending at the Commission that affords an opportunity to clarify that the TCPA does not apply to non-telemarketing, informational communications from utilities to their customers. When do you plan to act on this?
3. Chairman Wheeler, I'm sure you'd agree that ensuring rural and urban consumers have access to reasonably comparable services at reasonably comparable rates is the ultimate measure of success or failure in the high-cost universal service program. Are you confident that the standalone broadband solution you're poised to adopt will do that – will it allow rural consumers to get standalone broadband at affordable rates like their urban counterparts? If not, what more do you think you will need do to address the problem? How do we ultimately make sure that rural consumers are paying roughly the same rates as urban consumers regardless of whether its voice or broadband they want?
4. Chairman Wheeler, 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 3rd 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 you plan to address the burden these rules may have on smaller video providers?

The Honorable Anna G. Eshoo

1. With regard to the FCC's set-top box proposal, I would like to know with specificity how content will be protected, and where specifically in the FCC proposal are content providers guaranteed to be compensated?
2. On October 14, 2014, the Campaign Legal Center, Common Cause and the Sunlight Foundation filed an Application for Review with the full Commission challenging a staff decision which found that broadcasters were free to ignore evidence that political ads identified on air as being sponsored by Super PACs were in fact paid for entirely by a single donor who was clearly the "true sponsor" under Section 317 of the Communications Act and FCC rules.

- a. Will you commit to taking action on this Application for Review within the next 90 days so that the legal status of this issue is resolved in time for the fall election cycle?
3. I appreciate the FCC's hard work on the special access proceeding – or “competitive services” as you termed it during the Communications and Technology Subcommittee FCC oversight hearing on November 17, 2015.
 - a. Do you believe the proceeding will be finalized before the end of the year?
4. On September 17, 2015, I wrote to you about the occupational health and safety of the estimated 250,000 workers a year that work in close proximity to cellular antennas and may be exposed to radiofrequency (RF) radiation in excess of the Federal Communication Commission's (FCC's) human exposure limits. It has now been three years since the FCC's Further Notice of Proposed Rulemaking on RF exposure limits and policies and I am concerned that the Commission has yet to issue a final rule on this matter.
 - a. Can you provide me with an update on the Commission's progress, and when a final rule will be accomplished?
5. As the FCC oversees the transition to a new Local Number Portability Administrator (LNPA), do you have plans to make the new LPNA contract available to the public for comments before it is finalized? If not, why not? Also, the current LNPA provides a free service that ensures the automatic location information (ALI) database is updated after a number is ported. This information is vital for public safety answering points to ensure that emergency responders are sent to the correct address in an emergency.
 - a. Will the new LNPA vendor be required to provide this critical service to update the ALI database?
6. During last month's hearing, a number of issues were discussed relating to the Commission's policies regarding process.
 - a. Please explain the steps the Commission takes to comply with the APA's notice and comment procedures before adopting a final rule.
 - b. Please explain the Commission's rule and policies regarding the disclosure of non-public information.

The Honorable Ben Ray Luján

1. Chairman Wheeler, Ranking Member Eshoo and Congressman Yarmuth led a letter with broad support to you about ensuring full disclosure of the sponsors of political advertisements – work my colleagues have championed. I'm proud to have joined them

on this letter and also on Mr. Yarmuth's bill, the "Keeping our Campaigns Honest Act." I would like to highlight one part of your response:

"I have focused on expanding the public's access to information about political advertising. For example, by broadening the universe of entities required to disclose the sponsoring organization of political advertising in the Commission's online public inspection file database. As of July 2014, television broadcasters are required to identify an advertisement's sponsor. Further, on January 28, 2016, the Commission adopted rules to expand the online file requirements to include cable operators, satellite TV providers, broadcast radio licensees, and satellite radio licensees."

- a. The recent Commission action on January 28th – is any of that information required to be machine readable and in a searchable, sortable, and downloadable format?
2. Before this committee last year, on July 28th, you said you were supportive of digitizing information and talked positively about the work the FCC was doing. You mentioned you had even won a prize for the consumer interface portion of your website. I actually have a bill that would require that the public file information be searchable, sortable, and downloadable.
 - a. With your support for improving the consumer user experience in accessing information, and digitizing information - when can we expect you to take actions to make the public and political inspection file information searchable and sortable, and more usable by the public?
3. Chairman Wheeler, because the need is so great, you and I have repeatedly discussed the importance of expanding broadband access to tribal communities. The FCC's 2016 Broadband Progress report found that 41 percent of residents of Tribal lands (1.6 million Americans) lack such access. Currently, the FCC is working to reform the universal service mechanism that supports rate-of-return carriers' deployment and maintenance of broadband services. Earlier this year, I led a letter to the FCC urging you to consider targeted investments in broadband infrastructure on underserved and unserved tribal communities through a Tribal Broadband Factor.

In your response, you noted that the Commission's February 12th order to modernize support for rate-of-return carriers sought comments on "additional reforms, including the Tribal Broadband Factor... to further incentivize broadband investment and deployment on underserved and underserved Tribal lands."

- a. Can I ask when the Commission plans to finish the process of gathering information on this proposal? Will you commit to a fall deadline?
- b. What other steps is the FCC taking to drive investment into Indian Country?

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 Gus Bilirakis

Chairman Wheeler, I understand that a lot of robocalls or automated text messages are an unwelcome part of modern life and should be limited, as they are now, under the telephone Consumer Protection Act but in some cases, consumers, customers have a legitimate need and a real desire to receive important information from some businesses. For example, utilities may need to contact their customers with information about outages, repairs, service restoration or other important service updates. This is especially true in a situation we face in Florida when we have hurricanes and tropical storms. So, it is a public safety issue.

1. I understand there is a petition from electric and gas utilities currently pending at the Commission to clarify that the TCPA does not apply to non-telemarketing informational communications from utilities to their customers. Does the Commission plan to act on this or can you comment on the status of the petition, please?

The Honorable Chris Collins

1. In December 2015, the existence of an internal email within the Enforcement Bureau was disclosed that in October of 2014 the staff of the Bureau's Northeast Region was informed that the FCC's response to pirate radio operations was being scaled back and the Enforcement Bureau would not be issuing notices of apparent liability to the majority of individuals engaged in such unlawful behavior. I would like to know who issued that directive.

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OPINION | REVIEW & OUTLOOK

Government by Google

A new rule on cable boxes violates copyright for no consumer gain.



PHOTO: ZUMA PRESS

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Anyone who doubts the miracle of market innovation should watch a movie on a computer tablet: Americans can queue up thousands of programs thanks to services like Netflix and Amazon Prime, and in recent years many have ripped

out the clunky old cable box. In response to this nonproblem, the government is rolling out rules for television “competition” that would mainly help the paupers running Google.

The Federal Communications Commission has proposed rules that would force television providers to create a universal cable-box adapter. This would hand over shows to companies—TiVo, Google—that could peddle programming as their own. The proposal, dubbed “unlock the box,” would allegedly allow competition for cable boxes that “a majority of consumers must lease today,” as the FCC puts it.

One irony is that the commission’s efforts to liberate consumers from a cable box will require an entirely new box, as providers say installing hardware in homes might be the only way to carry out the requirements. Consumers will pay for that and network overhauls. Also rich is FCC squawking about how much consumers shell out for cable boxes, as the commission micromanages the industry and scrapes up billions in additional fees.

The new rule amounts to government-sponsored piracy in allowing TiVo and Google to broadcast programs that providers pay to distribute. Google wouldn’t have to abide by carriage agreements or pay licensing fees, which is one reason content creators are pushing back. The stealing would no doubt violate copyright. Some 30 members of the Congressional Black Caucus sent a letter to FCC Chairman Tom Wheeler saying the rule would relegate minority programming to channels rarely visited by viewers.

Google prodded the supposedly independent FCC in 2014 to bust open cable boxes, and Chairman Wheeler followed orders. The tech giant wants to sell ads against poached content, mowing over cable commercials and crushing

advertising competitors.

Two days after the commission dropped vague news of a forthcoming proposal, Google invited folks on Capitol Hill to tinker with a compliant box—and how nice that the commission offered the company advance tips on what to build. Searching the FCC for favors isn't new; last year the commission decided to exempt Google from net-neutrality rules a week before the proposal was completed.

There are other problems: Cable providers are legally required to protect privacy, but Google is free to mine your habits, and a universal adapter would be vulnerable to hacking. Rand Paul supporters, here's your new cause. The rules won't hit for another two years or longer, and by then the technology will be obsolete—at best a market for equipment no one wants. Google's media streamer, Chromecast, didn't even exist three years ago, as Republican FCC Commissioner Ajit Pai points out.

The FCC rejected a similar proposal in 2010, but now the Democratic majority seems committed to ramming it through before President Obama leaves office. Mr. Wheeler has already done great harm to his reputation by taking dictation from the White House to regulate the Internet. He'll do even more damage if he does the cable-box bidding of Google.