Federal Communications Commission
Office of Legislative Affairs
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Office of the Director

June 16, 2016

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on March 22, 2016 at the hearing entitled "Oversight of the Federal Communications Commission."

If you have further questions, please contact me at (202) 418-0095.

Sincerely,

[redacted]

Michael Dabbs

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

Enclosures

Attachment I -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?**

   Response: In December 2014, the Consumer & Government Affairs Bureau (CGB) launched the Consumer Help Center (CHC), a streamlined, consumer-friendly online portal that combined the consumer complaint function with the FCC's educational materials on a range of communications issues. The CHC not only provided consumers with a more straightforward complaint intake portal but it also provided the FCC with a far better platform to analyze complaint data. In looking at the data from the previous complaint system (CCMS), it was apparent that consumers were confused by the eight different telemarketing forms from which they could choose on CCMS.

   When the Commission developed the CHC, it provided three fields for consumers to select from when entering a TCPA complaint – telemarketing, robocalls, and junk faxes. As a result, the same information is collected in the CHC as was collected for TCPA complaints in CCMS, but now the consumer can more easily identify their issue and is only asked relevant questions based on their issue. This is more consumer-friendly and, because the consumer better understands what information to provide, more accurate. The Commission alerted the public to the changes in the reported data in a Consumer Advisory notice (https://www.fcc.gov/consumers/guides/consumer-advisory-updates-fcc-consumer-complaint-data).

   Recently, CGB launched a new Consumer Complaint Data Center, to provide greater transparency to the public into consumer complaints received by the Commission. CGB intends to produce more granular data, including TCPA data, over time through the Data Center. This launch is another step in the broader effort of the FCC to streamline its consumer complaint processing and make more detailed, real-time data available.

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.**

   Response: The Commission is engaged in ongoing efforts to address specific problems reported by rural customers and carriers. The FCC continues to handle, on an ongoing basis, individual rural call completion complaints filed with the Enforcement Bureau and the Consumer and Governmental Affairs Bureau. When the Enforcement Bureau serves a provider with a complaint filed at the Commission by a rural carrier, providers are requested to respond within two weeks, leading to prompt resolution of specific problems. Complaint numbers in 2015 were down from those reported in 2014, particularly in the last five

months of 2015. Although the Enforcement Bureau does not discuss its ongoing investigations as it may prejudice the proceedings or affect their outcome, the Bureau recently entered into its fifth resolution of a rural call completion investigation. In this case, a long distance provider agreed to pay a civil penalty of $100,000 for failing to ensure that its intermediate providers were performing adequately in delivering service to a rural consumer and for failing to cooperate with the Commission's investigation of the problem. This was the first investigation arising out of an informal consumer complaint and is part of the Commission's ongoing efforts to address rural call completion problems.

The Commission is also engaged in an ongoing rural call completion data collection effort, and the Commission continues to examine this data to help inform its understanding of rural call completion problems and determination of next steps. Additionally, consistent with the terms of the *Rural Call Completion Order*, we continue to work with our partners at state utility commissions to provide, upon request, access to state call completion data. Furthermore, pursuant to the *Order*, the Wireline Competition Bureau will issue a report regarding the data collection by August 30, 2017.

We are also working with the industry to assist long distance providers by identifying rural competitive local exchange carriers (CLECs) that are affiliated with rural incumbent local exchange carriers (ILECs) or whose operating company numbers (OCNs) do not appear on the annually published NECA list of rural ILECs. Although the Commission's prohibition against call blocking extends equally to all calls, regardless of whether the destination OCN appears on the NECA list, the list helps long distance providers identify individual rural destinations. We have received complaints from rural LECs that are not incumbent LECs and therefore are not on the NECA list. We have asked NTCA to identify these rural CLECs so that we can make that list public, which should enable long distance providers to more carefully monitor their routing to these rural CLECs as well as to ILECs on the NECA list and ensure compliance with our rules.

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?**

   Response: The Commission's complaint, recordkeeping requirements, and data collection efforts are aimed at reducing rural call completion issues and creating incentives for carriers to reform their practices. For instance, through the reporting requirements of the *Rural Call Completion Order*, carriers gain insight into their rural call completion effectiveness and have the opportunity and incentive to act before the Commission detects issues identified in the reports. The rules created a safe harbor incentive for long distance providers to limit the number of intermediate providers in a call path to no more than two. (Providers that adopt the safe harbor do not have to file quarterly reports after one year.) The safe harbor has been adopted by AT&T and CenturyLink. Also, pursuant to its 2015 consent decree, Verizon – which must file quarterly reports - implemented a modified safe harbor that limits its use of intermediate providers between its network and all areas served by rural ILECs. Together, AT&T, CenturyLink, and Verizon provide originating phone service

for the vast majority of Americans. The net effect of their safe harbor compliance is that most callers should have no more than two intermediate providers in the call path when calling a customer of a rural ILEC.

In addition, the 2013 rules also prohibit the introduction of false ring signaling into a call path. An originating provider that learns its intermediate provider is passing false ring tone should be incented not to use that provider in the future.

Although the FCC has created the rules discussed above to target and police rural call completion problems, the Commission continues to address specific problems reported by rural customers and consumers to ensure prompt resolution through dedicated channels for consumers and rural carriers to report call completion problems. The Enforcement Bureau reviews complaints from rural carriers individually and serves these complaints on the originating provider, requesting that the provider investigate the problem and file a report with the Bureau within two weeks detailing its investigation and how it resolved the problem. When an originating provider's investigation reveals a problem with an intermediate provider in a call path to a destination, the originating provider usually removes the intermediate provider from routing to the rural destination that is the subject of the complaint and sometimes from routing to any rural destination.

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.**

   Response: The FCC has investigated and entered into several consent decrees regarding whether carriers are policing their intermediate providers. Most recently, last month the Bureau entered into its fifth resolution of a rural call completion investigation in which a long distance provider will pay a civil penalty of $100,000 for failing to ensure that its intermediate providers were performing adequately in delivering service to a rural consumer and for failing to cooperate with the Commission's investigation of the problem. The Commission also has taken enforcement action against four companies that both use intermediate providers and act as intermediate providers. As noted above, the FCC's safe harbor rules provide an incentive for long distance providers to limit the number of intermediate providers in a call path to no more than two, which greatly enhances the originating provider's ability to police its intermediate providers routing of 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?**

   Response: The Commission has and will continue to vigorously investigate service providers who have originated calls that appear to have been impacted by fraud.

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?

Response: The goal of this rulemaking is to promote competition, innovation, and consumer choice. It will not alter the rights that content owners have under the Copyright Act; nor will it encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements.

Specifically in the proposal we stated: "our regulations must ensure that Navigation Devices (1) have content protection that protects content from theft, piracy, and hacking, (2) cannot technically disrupt, impede or impair the delivery of services to an MVPD subscriber, both of which we consider to be under the umbrella of robustness (*i.e.*, that they will adhere to robustness rules), and (3) honors the limits on the rights (including copy control limits) the subscriber has to use Navigable Services communicated in the Entitlement Information Flow (*i.e.*, that they adhere to compliance rules). Through robustness and compliance terms, we seek to ensure that negotiated licensing terms regarding subscriber use of content that are imposed by content providers on MVPDs and included in Entitlement Data are honored by Navigation Devices."

Simply put, this means that the final rules will be clear that any alteration of the video stream, including ads, by a third party app or device will be prohibited.

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?**

Response: The Sweetwater Consortium (Sweetwater), which was formed in 2013 and consists of 76 schools and school districts in Tennessee, does not currently have a pending request for waiver. However, the Tennessee E-rate Consortium filed a request for waiver in February 2013. The Tennessee E-rate Consortium, which consists of 76 Tennessee school districts, first applied for and received E-rate support in funding year 2011. In funding year 2012, 43 additional school districts sought to join the Tennessee E-rate Consortium and purchase services through the consortium's existing contract. The Universal Service Administrative Company (USAC) denied funding for the 43 districts that were not included on the Tennessee E-rate Consortium's original FCC Form 470 to purchase services through the contract. USAC explained that the addition of 43 districts was a significant change in the scope of services sought and was therefore a violation of the E-rate program's competitive bidding rules. That request for waiver is currently pending with the Wireline Competition Bureau.

Regarding Sweetwater, USAC recently upheld its denial of funding requests from Sweetwater members for funding years 2013, 2014, and 2015, finding that Sweetwater violated E-rate program requirements that require applicants to choose the most cost-effective bid offering and demonstrate that a valid, signed contract exists between the applicant and service provider. Sweetwater filed an appeal of USAC's decision with the Commission on May 9, 2016. Commission staff is currently reviewing that appeal and is committed to resolving the appeal in a timely fashion.

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.**

   Response: The *Second E-rate Modernization Order* instructed USAC to ensure the cost-effectiveness of E-rate purchasing by analyzing its approach to cost-effectiveness reviews and sharing that information with stakeholders. This instruction was in the broader context of directing USAC to develop a robust performance management system in order to advance the E-rate program goals established in the Modernization Orders. In the past year and a half, USAC has taken significant steps to improve program management. Specific examples include the rollout of a new online portal for all applicant forms and applications and hiring new staff to manage stakeholder outreach and provide technical advice to applicants on improving broadband connectivity. Most importantly, USAC now publicly posts detailed information on all services purchased by applicants and the costs of these services. Providing this pricing data to applicants allows them to compare pricing between providers, as well as the pricing for same or similar services being offered to neighboring schools and libraries, helping drive cost-effectiveness through pricing transparency.

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.**

   Response: USAC has taken numerous steps to improve direct stakeholder engagement and provide technical guidance to E-rate applicants. In collaboration with the Office of the Managing Director (OMD) and the Wireline Competition Bureau (WCB), USAC initiated an aggressive outreach and technical assistance effort. Experts from USAC and the Commission have been in direct contact with hundreds of E-rate applicants of all sizes from all regions of the country to discuss applicant broadband needs and explain the opportunities presented by the rule changes adopted in the *Second Modernization Order*. These efforts have led to ongoing engagement with applicants in over 40 states.

   USAC also holds annual applicant trainings and service provider trainings in numerous cities throughout the country and has regularly-scheduled outreach calls with stakeholder groups representing state E-rate coordinators, large school districts, libraries, state consortia, E-rate consultants, service providers, and state chief technology officers. During the June 2015 service provider trainings and Fall 2015 applicant trainings, USAC provided an in-depth training on fiber options and provided technical information for fiber construction projects. Applicants can also review Request for Proposals (RFPs) and other requirement documents for fiber construction projects which are publicly available on USAC's website. USAC has provided certain staff with specialized training in fiber construction and the staff is available to answer questions about the process for applying for E-rate funding for fiber construction. In addition, USAC conducts webinars on a variety of topics during the year for those who are not able to attend in-person training. USAC also provides a wealth of information through its weekly newsletter, which currently has over 40,000 subscribers. In January 2016, USAC launched a blog, File Along With Me, which provides step by step instruction on how to apply for E-rate discounts over the course of the filing window.

USAC has also implemented and participated in a variety of Tribal-specific outreach events and trainings pursuant to the *E-rate Modernization Orders*' focus on assisting Tribal schools and libraries. USAC's Tribal Liaison, in coordination with the Commission's Office of Native Affairs and Policy, WCB, and OMD, has conducted full-day training modules at Tribal-specific trainings throughout the year. Last year, these trainings received an approval rating from participants of around 91%. USAC's Tribal Liaison also provides one-on-one help to Tribal schools and libraries to assist them in understanding the E-rate application process. For example, last year, after discovering that a small Tribal library in Oklahoma (Thlopthlocco Tribal Town Library) was frustrated with its E-rate application, USAC reached out to assist the library. This library was committed over $35,000 in E-rate support in FY 2015 after receiving assistance from USAC on the application process. Assistance like this is vital to ensuring that Tribal schools and libraries are fully empowered to participate in the E-rate program.

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?**

   Response: USAC has always evaluated cost-effectiveness as part of its application review as required by E-rate program rules. E-rate applicants are required to select the most cost-effective bid that meets their needs, using price as the primary factor. USAC's Program Integrity Assurance (PIA) review process often requests further documentation from applicants in order to demonstrate cost-effectiveness. USAC makes every effort to complete the PIA process in a timely fashion. The Commission and USAC are focused on continuing to improve all aspects of program efficiency as part of implementing the E-rate Modernization Orders. Streamlining the PIA process is a critical element of these improvements.

   To date, USAC has approved funding commitments for E-rate applicants in Tennessee totaling $67.9 million for funding year 2015, and $54.9 million for funding year 2014.

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.**

   Response: I believe that customers of broadband Internet access services and their internet service providers (ISPs) will be well served by adoption of rules that provide clear guidance about what privacy and data security protections are provided by Section 222 of the Communications Act.

   The FCC and the FTC have worked together on privacy and other consumer protection issues for a very long time. The FTC has an important enforcement mandate under its Section 5 authority to address unfair or deceptive acts or practices and has demonstrated great leadership in the area of protecting the privacy of consumers. We look to the good work that the FTC has done in crafting our proposed rules.

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?**

Response: As an agency of general jurisdiction, the FTC does a terrific job working cooperatively with numerous state and federal agencies, including the FCC. While the FTC has an important role in protecting consumer privacy, Congress has enacted sector-specific privacy protections in a variety of areas. Some of these privacy protections extend to financial institutions, schools and other educational institutions, healthcare providers, and credit reporting agencies. And, Congress has tasked various agencies with implementing and overseeing regulations in these areas. For example, the Department of Health and Human Services regulates the privacy practices of "covered entities" under HIPAA – such as doctors, hospitals, and health insurance plans.

The FCC has been tasked by Congress with protecting the private information collected by telecommunications, cable, and satellite companies in Sections 222, 631, and 338 of the Communications Act. As the expert agency on communications policy issues, the FCC is well positioned to ensure communications providers are protecting their customers' personal information and that consumers have the right level of control over their own information, while also continuing to work closely with the FTC.

I would note that the FTC Act contains an exemption for common carriers – as well as banks, savings and loan institutions, Federal credit unions, air carriers, and certain others – from the prohibition against unfair and/or deceptive acts or practices. I am on record stating that it is time for the common carrier exemption to be reexamined. However, under the current law, the FTC lacks authority to regulate or bring enforcement actions concerning the provision of broadband Internet access services. Unless and until the FTC Act is updated, authority to regulate the privacy practices of common carriers, including ISPs, lies with the FCC.

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?**

Response: Consumers want to know what information is collected about them, how that information is shared, and how they can exercise choice over what is disclosed to third parties. Consumers expect more protection—and to be asked permission more explicitly—for a variety of reasons. Sometimes it is because the type of information itself is more sensitive. Other times, it is more to do with who has the information, who gathered, it, or why it was gathered.

ISPs occupy a unique position in the Internet ecosystem as a gatekeeper through which all of a consumer's online activity (including a tremendous amount of personal information) must travel. This is a different relationship than consumers have with, for example, a website or app that they can choose to use (or not use) on a minute-by-minute basis. As a result, the FCC's proposed approach is tailored to this unique position occupied by ISPs.

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?**

Response: Following the AWS-3 auction, the Commission denied bidding credits of approximately $3.3 billion sought by SNR and Northstar and the two applicants subsequently selectively defaulted on 197 of the 702 licenses that they won in the auction. SNR and Northstar have filed an appeal of the Commission's denial of credits, which appeal is currently pending in the District of Columbia Circuit.

The 197 licenses on which SNR and Northstar defaulted remain in the Commission's inventory and will be re-auctioned. At this time the Commission has not determined the timing for such auction. Regardless of when that auction takes place, the Commission has taken steps to ensure the American taxpayers will be made whole in the event that the 197 licenses sell for less than their winning bids in Auction 97. Should that occur, SNR and Northstar will be obligated to pay the difference between the sale price in the re-auction and their winning bid price in Auction 97. Moreover, to address any concern that SNR and Northstar might not be unable to pay the amount of the potential deficiency payments, DISH Corporation has provided the Commission with security against this risk in the form of a guarantee by DISH.

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.?**

Response: One of the Commission's top priorities is to make more commercial spectrum available. To help accomplish this goal, the Commission has several open proceedings, such as the Spectrum Frontiers rulemaking you mention. The Commission is actively reviewing the public record to determine the appropriate licensing and technical parameters that should apply to the spectrum bands in the Spectrum Frontiers rulemaking. Specific procedures for a particular auction (such as 3.5 GHz or Spectrum Frontiers bands) will be established following an opportunity for public comment. Although the Commission continues to make steady progress in each of these spectrum-related proceedings, the specific timing of any particular auction will depend on the completion of this process. In addition, the Commission will factor in the status of the Incentive Auction, an undertaking that is currently underway, and will also take into account any other resource constraints and relevant market conditions when it establishes a schedule for future auctions. We are mindful of the need for additional commercial spectrum and will continue our efforts to assure that it is brought to market in an expeditious manner.

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?**

Response: We believe that a 39-month transition period is sufficient for stations to apply for a construction permit (3 months) and move to their new channels (36-month Construction Period), while also enabling forward auction winners to get access to their newly acquired spectrum as quickly as possible, thus ensuring a successful Incentive Auction. The Commission has created a framework that gives stations every opportunity to remain on the air, even if time runs short due to unforeseen circumstances. To assist stations, the Commission will permit six-month extensions for stations that, for reasons beyond their control, cannot complete the modifications to their facilities during their construction period. Additionally, special temporary authority may be granted to operate on a new channel using a temporary facility while they complete their

tower modifications.

The Commission is also committed to establishing fair and efficient process for reimbursing broadcasters' relocation costs. The Commission has taken steps to engage a reimbursement administrator to facilitate the disbursement of funds. It recently solicited proposals for this position and will shortly announce the selection of the administrator.

Commission staff is developing a transition schedule that will maximize the efficiency of this transition and minimize service disruptions. The Commission recognizes that many different variables are at play that will impact when an individual station can successfully transition, including weather and seasonal issues, daisy chains and interference issues, and availability of equipment and crews. We will take into account how many stations actually need to be repacked, and the specific characteristics of each, in determining the repacking schedule. The Commission has been working closely with broadcasters to get important input from the industry on planning a successful transition, taking into account all of those different variables. We have also had discussions with representatives of the wireless industry, who obviously have a stake in an efficient transition process. We anticipate further interaction with all affected stakeholders as we develop and refine this transition plan.

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?**

   Response: There is no doubt that many actors in the online ecosystem collect and share lots of data. Professor Swire's paper offers a window into the data collection practices of a number of different types of entities in that eco-system. It would have been helpful if it had provided a broader and deeper analysis of the data that ISPs can and do collect. An ISP handles all network traffic, which means it has an unobstructed view of all of unencrypted online activity (such as webpages visited, applications used, and the times and date of internet activity). On a mobile device, an ISP can track the physical and online activities throughout the day in real time. Even when data is encrypted, an ISP can still see the websites that a customer visits, how often they visit them, and the amount of time they spend on each website. Using this information, they can piece together enormous amounts of information about an individual – including private information such as a chronic medical condition or financial problems.

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?**

   Response: The FTC has demonstrated great leadership in the area of protecting the privacy of consumers, and our agencies have long had a close working relationship. As a result, the FCC's proposed privacy rules draw substantially upon the FTC's approach. For example, both agencies have structured their privacy frameworks around the same principles of transparency, choice and security. Moreover, the FCC's proposed rules reflect key principles of the privacy framework the FTC laid out in its 2012 report entitled, "Protecting Consumer Privacy in an Era of Rapid Change." Where the FTC has sufficient rulemaking authority—as in the area of children's online privacy—it has adopted privacy and data security rules. Where it doesn't have sufficient

rulemaking authority, for example, it has repeatedly sought such authority. Our NPRM looks to both the FTC's enforcement experience and to its rulemakings as a source of useful precedent.

For example, the NPRM proposes that broadband providers be required to protect customer information through risk management assessments, employee training, and other means. However, it does not propose the specific technical measures that a broadband provider must take to implement these requirements. This flexible, company-driven approach to securing customer information is consistent with FTC's approach. Likewise, the NPRM seeks comment on adopting data disposal obligations, and uses the FTC's data disposal rule as one possible approach to ISP data disposal requirements.

We also recently received comments from the FTC in response to our NPRM. We are reviewing these comments. We greatly appreciate and respect the FTC's commitment to consumer privacy as reflected in their decision to file comments and in the substance of their filing. The FTC's recent comments are an important part of the record upon which the Commission will rely in adopting final 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?**

   Response: Consumers should have control over how their personal information is used and shared. This is especially important in the context of personal information shared with ISPs, which is the focus of the FCC's rulemaking.

   The proposal set forth in the Commission's recently adopted NPRM would give all consumers the tools we need to make informed decisions about how our ISPs use and share our data, and confidence that ISPs are keeping their customers' data secure.

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?

   Response: Let me assure you that the proposal seeks to ensure that the privacy protections that exist today will also apply to alternative navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent.

The proposal tentatively concludes that third-party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that manufacturers must certify they are in compliance with the same privacy obligations as pay-TV providers. The proposal asks a number of questions about how best to enforce such a requirement, including whether an independent entity should validate third-party manufacturer's certifications, whether the Commission should maintain the certifications, and what the appropriate enforcement mechanism should be if there are any lapses in compliance with any certification. Finally, the FTC and a group of state attorney generals submitted constructive comments and stating that they would be in a position to enforce the privacy protections, similar to how privacy protections are enforced today for apps and devices.

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?**

Response: I share your interest in bridging the rural digital divide in our country. The universal service program is one of the most important tools at our disposal to ensure that consumers and businesses in rural America have the same opportunities as their urban and suburban counterparts to be active participants in the 21st century economy. The Commission is focused on updating the universal service high-cost program to ensure that we are delivering the best possible voice and broadband experiences to rural areas while providing a climate for increased broadband expansion, all within the confines of the Connect America Fund's (CAF) budget.

The Commission recently adopted an Order and FNPRM addressing the framework for the CAF Phase II competitive bidding process that will allocate more than $2 billion over the next decade in CAF support for rural broadband through competitive bidding. Recognizing the diverse challenges inherent in deploying broadband in rural America, the Order sets robust yet flexible standards for broadband deployment. To encourage a broad range of bidders in the auction, we establish technology-neutral performance tiers with varying levels of speed, usage allowances, and latency. One of the primary policy goals for this competitive bidding process is to ensure widespread participation from all providers that can deliver a high-quality service. Simply put, more competition between providers means that finite universal service funding will be used efficiently to deliver the best possible solutions. To ensure that rural Americans, can benefit from the innovation and advances in technology available in urban areas, we will give more weight to bids that offer better performance.

The Order also establishes network buildout requirements and reporting obligations to enable the Commission to monitor the progress of deployment, and creates a framework for a Remote Areas Fund auction in extremely high cost areas that receive no bids in this auction. As the Commission moves forward with finalizing the structure of the CAF Phase II reverse auction, we will take into consideration the issues and concerns presented by all stakeholders and give full attention to the best ways to ensure that rural communities have access to robust and reliable broadband service.

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?

Response: On May 25, 2016, the United States Court of Appeals for the Third Circuit issued an opinion in *Prometheus Radio Project v. FCC* , holding in part that the Commission erred procedurally by changing its attribution rules without first determining that the underlying ownership limits remain in the public interest, hence vacating the current Joint Sales Agreements (JSAs) rules. The court did, however, specifically note that the Commission could readopt the JSA attribution rule in its forthcoming quadrennial.

In the event the Commission does so, we have been advised by the House and Senate Appropriations Committees that they believe that the Fiscal Year 2016 Consolidated Appropriations Act, section 628 of division E (Public Law7 114-113; 129 Stat. 2469), which grandfathered pre-existing JSAs, should be interpreted so as to exempt pre-existing JSAs irrespective of any assignment or transfer of control of a broadcasting license. After consultation with the committee staff, the Commission provided technical assistance to ensure that the Committees' goals were met in future legislation. The Commission's technical assistance is reflected in the text of the House Appropriations Subcommittee on Financial Services Fiscal Year 2017 bill released on May 24, 2016 and marked up the next day.

With regard to the specific situation mentioned in your question, the stations shared most technical services, office and studio space, the studio-transmitter link, and certain news programming as part of a related Shared Services Agreement (SSA), not the JSA. SSAs were not covered by our decision to attribute certain television JSAs, nor were they required to be unwound or otherwise amended as a result of the change in ownership of the Spanish language station's partner. It is our understanding that the station continues to air Spanish language news.

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?

Response: The Commission receives a substantial number of complaints from consumers about the robocalls and texts they receive, including complaints from consumers who inherit reassigned phone numbers. As the June 2015 order made clear, the TCPA requires the consent of the called party, rather than the party the caller

intends to call, and places no obligation on consumers who inherit a phone number to notify the robocaller of the reassignment. The Commission identified a number of best practices robocallers may use to identify a reassignment before making calls. Nevertheless, the Commission acknowledged that those best practices may not in every case reveal a reassignment and thus gave robocallers an additional one-call opportunity to discover the reassignment. The Commission's decision gives callers greater protection from liability than some federal courts which have said that *every* robocall to a consumer other than the subscriber are subject to TCPA liability. Nevertheless, the Commission will continue to encourage further development of best practices so that businesses trying to reach their customers do not make unwanted robocalls.

b. Do you believe that this additional regulatory burden should be shouldered by companies?

Response: As the Commission found in the June 2015 order, the TCPA places the burden on robocallers to avoid calling consumers who have not provided their prior express consent. The Commission found that best practices enable robocallers to detect reassignments and strikes the right balance between their right to contact consumers who want those calls and protecting consumers who do not.

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**?

Response: The June 2015 order reiterated and applied the Commission's existing interpretation of "autodialer" and did not adopt a new interpretation. While the Commission was not asked to address specific types of equipment, the Commission provided additional clarity regarding relevant factors in determining what equipment constitutes an autodialer, including the amount of effort it would take to modify a piece of equipment to have the capability to dial random or sequential numbers.

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?

Response: The Commission gave full consideration to the impact its ruling would have on affected businesses of all sizes. Consistent with our rules, the Commission sought public comment on all petitions addressed in the order. Based on the record, the Commission granted relief to some businesses, including a petitioner who provided time-sensitive healthcare robocall alerts. Where the Commission was compelled by the statute and its own precedent to deny relief, the ruling nevertheless provided clarity and a roadmap for compliance.

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?**

Response: We are reviewing the petitions and records in response and will move to resolve them expeditiously.

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?**

   Response: The Commission eliminated the Established Business Relationship (EBR) exception to the consent requirement for telemarketing robocalls in a 2012 decision. Specifically, the Commission eliminated the EBR exemption for prerecorded telemarketing calls to residential lines in to ensure consistency with the Federal Trade Commission's parallel rules. The Commission reached this decision after seeking public comment on the proposal and gathering a record from businesses and consumers alike.

6. **Can you explain to the committee the timeline for developing the new regulations required as a result of Section 30l (b) of the Bipartisan Budget Act of 2015?**

   Response: Section 30l (b) of the Budget Act requires the Commission, in consultation with the Department of the Treasury, to prescribe regulations to implement the amendments made by this section not later than nine months after the date of enactment. We are moving forward expeditiously to implement the Congressionally-mandated exemption.

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?**

   Response: Yes. Commission staff worked closely with the Consumer Financial Protection Bureau (CFPB) to coordinate the two agencies' approaches to limits on the number of permissible debt collection calls, and in drafting the recently released Notice of Proposed Rulemaking (NPRM). The NPRM seeks comment on how any limits CFPB might make under the Fair Debt Collection Practices Act should inform our implementation of the Budget Act amendment. Commission staff also consulted with the Department of Treasury staff, as required by the Budget Act, the Department of Education, as well as other federal stakeholders, including those with substantive expertise regarding debtor-creditor relationships.

8. **The FCC is currently receiving comments on a proposal to impost 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.**

      Response: The FCC's proposal marks the start of the rulemaking process. The interest of consumers animates the entire proceeding, and we believe that providing consumers with notice, transparency, and choice over how their personal information is used by ISPs will advance that goal. In any event, all members of the public have an opportunity to offer their views of how best to protect broadband customer privacy and the impact on consumers of different approaches.

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.

Response: The proposal does not regulate the privacy practices of "edge providers." The NPRM is focused only on ISPs and would therefore not govern the activities of edge providers. The FTC has a strong track record of ensuring such edge providers protect consumer privacy.

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?

Response: Section 222 of the Communications Act obligates telecommunications providers to protect the confidentiality of customer proprietary information and prohibits most uses and sharing of customer proprietary information absent customer approval. The goal of the NPRM is that any final rules that the Commission may ultimately adopt pursuant to Section 222 ensure that consumers know what information ISPs collect about them, how that information is shared, and how they can exercise choice over what is disclosed to third parties. The NPRM seeks comment on the best way to achieve this goal.

The Commission's proposal recognizes that broadband providers want to monetize data and does not bar ISPs from doing so. Nothing in the NPRM is intended to prevent an ISP from getting consumer information—they just can't unfairly leverage their position with respect to that information. Accordingly, consistent with Section 222, the Commission has proposed that there should be clear, enforceable rules so consumers know how their ISP is collecting, using, and sharing their information.

While the NPRM would not govern the activities of edge providers, it bears mentioning that edge providers are subject to a regulatory framework with FTC oversight and enforcement, and often state oversight as well. The FTC has a strong track record of ensuring such edge providers protect consumer privacy.

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?

Response: The resolution of any specific interference complaint depends on a variety of technical and non-

technical factors, including the spectrum impacted, the equipment involved, the severity of the interference, and the information provided by the complainant. Thus, the timeframe to resolve interference complaints varies—some complaints are resolved in a phone call, while others may require weeks of painstaking work by teams of agents. Accordingly, while the time needed to resolve an interference complaint is an important indicator of performance, it does not fully reflect that performance.

FCC Enforcement Bureau field managers and agents work hard to respond to and resolve public safety interference complaints as quickly as possible. We regularly hear from federal, state, and local stakeholders thanking us for our prompt assistance in resolving interference to critical infrastructure or emergency frequencies. At your request, we now post our public safety complaint data online at https://www.fcc.gov/pubsafix. We have now posted data for April 2015 through December 2015. During that time, our field offices received 255 public safety interference complaints. The published data show that we continue to meet our speed of disposal target of responding to 99% of such complaints within one day, and in many cases, on the same day. We are also happy to discuss with you or your staff our performance on any of the cases reflected in the public safety reports posted online.

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.

Response: The company is OceanEast ASC, LLC with a team sub-contractor, Censeo, under a single contract award. The contract value is $845,519.55. The FCC does not have another contract with OceanEast, ASC, LLC.

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?

Response: The consultants hired for the Field Modernization project conducted a detailed analysis of the FY 2014 data in the Enforcement Bureau Automated Tracking System (EBATS) and reviewed prior year data as reflected in previous assessments of the Field, GAO reports, strategy and planning documents, White Papers, and various other proposals discussing field performance. The consultants gathered additional data via interviews with field staff. Those interviews discussed the types and number of matters handled, the amount of time spent on investigations versus administrative and other tasks, the time necessary to perform different types of matters, and the prioritization of work.

After reviewing all of this information, the consultants determined that the Enforcement Bureau "closed" public safety matters during FY 2014 within 28 days on average, with many closed within a single day. This data point understates our speed in resolving interference issues that threaten public safety. First, closure of a case generally comes after both the interference is resolved and any enforcement action is issued. Thus, the average *resolution* of public safety interference matters during FY 2014 was likely less than 28 days. Second, during FY 2014, the Bureau defined "public safety" as including all complaints from government agencies, regardless of whether the interference posed a threat to safety or property. This definition therefore did not distinguish between a complaint about interference to fire department radios during a house fire, for example, from a complaint from the National Arboretum regarding interference to a wireless repeater. In FY 2016, we revised the public safety interference definition to focus on interference problems that actually posed such a

safety threat—"harmful interference within spectrum allocated to government entities for emergency or public safety purposes."

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?**

      Response: In its July 2015 order, the Commission recognized the importance of health-related messages and granted relief requested by the petitioner, American Association of Healthcare Administrative Management (AAHAM). The Commission granted the relief for calls by or on behalf of "healthcare providers" as requested by AAHAM. As it does with such petitions, the Commission sought public comment and arrived at its decision based on the record. The Commission did not rule on the question of calls from "health plans," "covered entities," or "business associates" because those questions were not raised in the petition.

   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"?**

      Response: In its July 2015 order, the Commission provided relief for calls by or on behalf of healthcare providers as requested by AAHAM. Commission staff have discussed the issue with interested parties. To date, no party has sought formal clarification or a separate declaratory ruling on this point.

   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?**

      Response: If a party files a petition for clarification or declaratory ruling on this point, the Commission will seek comment and address the request consistent with its normal process.

   d. **When is the earliest date that a clarification can be expected?**

      Response: The earliest date by which the Commission could address such a request would depend on when a petition is filed and when comments on that petition are received.

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?**

   Response: Yes, each individual commissioner's office, including my office, has a budget for travel. My office travel budget is set at $85,583 and each of the individual Commissioners' budgets are set at $58,677.

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?**

   Response: In addition to our primary travel budgets, our offices also have separate funding for international travel. Only the Chairman and the Commissioners, not their staff, may access these international travel funds. The funds come from the International Travel account, which is managed by the International Bureau. Finally, the Chairman and Commissioners may access travel funds set aside for the Office of Native Affairs and Policy and the Connect2Health initiative when traveling in support of the FCC's efforts in those areas.

3. **What happens if that budget is exceeded? And what internal safeguards are in place to ensure that the limit is not exceeded?**

   Response: Each Bureau and Office, including the Offices of the Chairman and the Commissioners, are provided an allotment. The FCC has controls in place to prevent over-spending. Travel expenditures in particular are monitored closely by the Office of Managing Director.

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.**

   Response: The FY 2015 Travel expenditures are below, including the separate International Travel amounts for myself and the other Commissioners. I have also included combined totals to assist you in reviewing this information.

FY 2015 Travel Expenditures for the Chairman's & Commissioner's Offices			
	Domestic Travel	**International Travel**	**Total Travel**
Chairman Wheeler	$48,387	$13,049	$61,436
Commissioner Clyburn	$48,189	$0	$48,189
Commissioner Rosenworcel	$40,592	$12,193	$52,785
Commissioner Pai	$36,028	$3,768	$39,796
Commissioner O'Rielly	$34,764	$15,056	$49,820
	$207,960	**$44,065**	**$252,025**

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?

Response: There is no rapid rate of growth, only an aberration in spending levels due to the Fiscal Year (FY) 2013 sequestration. We had the same level of spending in FY 2011 as FY2015, and one million below that level in FY2014. We will continue to work with OMB and our appropriators to ensure appropriate travel funding levels. The chart below provides all actual travel expenditures from FY 2011 to FY 2016:

Fiscal Year	In Millions
FY 2011	$1.6
FY 2012	$1.9
FY 2013	$0.8
FY 2014	$1.5
FY 2015	$1.6
FY 2016 (Enacted)	$2.2
FY 2016 (YTD)	$0.9

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?**

Response: To date, average salaries during my tenure have grown at a slower rate than they did during Chairman Genachowski's tenure. As the chart below shows, average salaries in the Enforcement Bureau increased 8.91% from FY 2010 to 2013 under Chairman Genachowski. Average salaries from FY 2013 to the present have increased by 7.09% – with 3.3% of the increase representing a government-wide cost of living adjustment.

Fiscal Year	FTEs	Total Salaries	Average Salaries and Benefits	Increase in Personnel Costs	Govern-wide cost of living adjustment	Difference	Increase of Average Salary During Chairmanship
2010	284	$39,144,737	$137,834				
2011	276	$39,365,660	$142,629	3.48%	0.00%	3.48%	
2012	267	$39,019,131	$146,139	2.46%	0.00%	2.46%	
2013	264	$39,632,745	$150,124	2.73%	0.00%	2.73%	8.91%
2014	259	$40,119,601	$154,902	3.18%	1.00%	2.18%	
2015	252	$40,807,953	$161,936	4.54%	1.00%	3.54%	
2016 (estimate)	240	$38,587,734	$160,782	-0.71%	1.30%	-2.01%	7.09%

The FCC's FY 2017 budget submission projects that average salaries for EB will rise in FY 2017. This projected growth reflects the implementation of the Commission's FY 2015 order to modernize the agency's field offices. Among other things, the modernization plan recommended the closure of certain field offices

and reductions in the total number of field staff. While the full implementation of those reductions in force awaits completion of negotiations with the FCC employees' union, field staffing has already begun to decrease due to employee retirements and departures for other positions. Following full implementation of the field modernization plan, the FCC estimates the EB FTE level for FY 2017 will be 211, a reduction in 48 positions from 259 positions in FY 2014. Thus, due to the reductions in lower-graded staff positions in EB's field offices, the FCC's average salary expenses for EB FTEs overall is increasing while the total number of EB FTEs is going down.

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.**

   Response: An important part of the Commission's work is to partner with the Department of Homeland Security and other entities to monitor communications at high-security events such as the State of the Union and the National Conventions, as well as other instances where our expertise is necessary to support national security. Our specific mission at such events is to resolve radio frequency interference issues that may arise and ensure that nothing interrupts critical communications systems. We take our role very seriously, and we are sensitive to the importance of this work in protecting lives and property.

   As you are aware, this year the Commission initiated a reorganization of its field offices. As in previous years, the Department of Homeland Security and the National Football League (NFL) asked the FCC to provide support during the events associated with Super Bowl 50. While I am not aware of any Enforcement Bureau Chiefs attending this event in prior years, FCC personnel from the Enforcement Bureau have historically supported the Super Bowl and other high security events (such as the State of the Union Address and the Democratic and Republican National Conventions) to resolve radio frequency interference issues that may arise and ensure that nothing interrupts the critical communications that occur at such events. The Super Bowl represents one of the largest uses of wireless communications and spectrum every year. Whether in the vicinity of the stadium or streaming the game online, the wireless network traffic is immense. FCC personnel therefore work in coordination with public safety organizations and the NFL frequency coordinators to resolve interference issues before and during the event.

   At this year's event, the field piloted new next generation monitoring and direction-finding technology that will allow field agents to more efficiently and effectively locate sources of radiofrequency interference. Agents also used FCC-developed software to conduct a spectrum inventory in and around the stadium. The Bureau Chief and the Acting Field Director published a blog on these new technologies and the Bureau's work at the game: https://www.fcc.gov/news-events/blog/2016/02/11/no-pass-interference-super-bowl-50

   The Enforcement Bureau Chief supervises all personnel in the Bureau, including all of its field agents. Given that several new on-scene and remote technologies that the Bureau developed under the leadership of the Bureau Chief were deployed for the first time at Super Bowl 50, the Bureau Chief met and worked with staff

at the San Francisco field office prior to game day, approved tasks and work assignments for game day, and reviewed and monitored the on-scene interference reports that were received prior to game day. Before, during, and after the Super Bowl, the Bureau Chief provided oversight on how use of the new technologies operated and could be used to identify and resolve potential sources of interference more effectively in the future. This will be integral to determine where the Bureau invests new technology resources in the future.

During the event, the Bureau Chief remained with the field agents in and around the stadium complex area, in a mobile direction finding vehicle orbiting the event complex, and at a remote spectrum sensor station located at a nearby public safety facility approximately 30 minutes from the stadium complex.

The Bureau Chief also received a briefing from the principal NFL frequency coordinator about the NFL's interference issues, both at this event and others, and the increased complications of accommodating all the wireless users due to the increased frequency congestion.

As discussed with your staff, I am providing to your office under separate cover a copy of the Bureau Chief's travel expense report for this trip. In addition, consistent with the practices of all bureau and office chiefs, the time worked by the Bureau Chief during this pay period, including time worked during this trip, was reported under the Program Code "Executive Direction."

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?**

Response: The savings from the office consolidation resulted in an overall decrease of $3 million to the FCC's rent. This reduction is reflected in the FCC's FY 2017 budget request. This reduction, however, is not reflected in the FCC's auctions expenses because the FCC did not have a decrease in the space that it utilizes for auctions related activities and staff.

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?**

Response: The Office of Managing Director's offices support the auctions program's administrative, financial, and information technology operations. This work comprises most of the $59 million provided to OMD.

The bottom line is that auctions must pay for its own costs under section 309(j). We use recognized accounting principles to calculate these costs. For instance, "Administrative Operations" includes costs for rent, physical security, and administrative support. Meanwhile, OMD's Financial Operations staff supports and operates financial systems and related matters, including collections and disbursement of auction funds.

The auctions program is extremely IT-intensive, and hence more costly than some of our other activities. The Commission's information technology group likewise operates under the auspices of OMD and is responsible for any improvements, maintenance and operation and security of the FCC's two largest auction systems, the

Universal Licensing System (ULS) and Integrated Spectrum Auction System (ISAS). In addition to these two systems, the IT group is responsible for the Licensing Modernization System (LMS) and Consolidated Database System (CDBS), which will be used for the incentive auction.

The Commission has requested additional funds in Fiscal Year 2017 to support the auctions process and modernize our basic auctions IT systems. These funds are crucial to future auctions planning as well as ongoing work to repack following the incentive auction.

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 FY 17. Please detail the reasons for this growth.**

    Response: The increase in the growth of "[o]ther services from non-Federal sources" includes the incentive auction work performed by outside contractors on the incentive auction bidding system. These costs include the administrator to manage the repacking of TV Broadcasters and incentive auction support for contracts. Other costs attributable here include new auction development and implementation, such as the 3.5GHz auction, as well as SAS/ESC testing for 3.5 GHz and beyond.

    Some of these costs are attributable to optimization for new spectrum opportunities, spectrum visualization tools both for public facing and internal systems, ISAS enhancements/modifications, and IV&V for all auctions related systems/changes. One important but temporary cost increase is the FCC Headquarters move/restacking share for auctions.

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?**

    Response: The FCC strictly follows 47 USC § 309 (j)(8)(b) and delivers the Auctions Expenditure Reports annually to the prescribed Congressional committees on the legally mandated dates. This report contains some sensitive information related to obligated contracts and accordingly, the law does not require public distribution. The FCC will continue to follow the law as mandated.

    In addition however, starting with FY 2014, the FCC has placed a summary of auction expenditure information on the FCC's website. Furthermore, the FCC made detailed information available about its proposed as well as recent auctions expenditures in its FY 2017 Budget request (pages 27-37), which is available to the public via links on the front page of the Commission's website.

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?**

Response: ISPs handle all of our network traffic. That means an ISP has a broad view of all of its customers' unencrypted online activity—when we are online, the websites we visit, and the apps we use. If we have mobile devices, our providers can track our physical location throughout the day in real time. Even when data is encrypted, our broadband providers can piece together significant amounts of information about us—including private information such as a chronic medical condition or financial problems—based on our online activity.

The Commission's proposal would give all consumers the tools we need to make informed decisions about how our ISPs use and share our data, and confidence that ISPs are keeping their customers' data secure.

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.

Response: You raise an interesting point, which underscores the importance of clear and meaningful disclosures about the collection, use and sharing of customer information and about the importance of giving consumers control over their information. Our proposal would give consumers the tools they need to make smart choices about protecting their information and enforcing the broadband provider's responsibility to do so.

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?

Response: There is no doubt that many actors in the online ecosystem collect and share lots of data. Professor Swire's paper offers a window into the data collection practices of a number of different types of entities in that ecosystem. It would have been helpful if it had provided a broader and deeper analysis of the data that ISPs can and do collect. An ISP handles all network traffic, which means it has an unobstructed view of all of unencrypted online activity (such as webpages visited, applications used, and the times and date of Internet activity). On a mobile device, an ISP can track the physical and online activities throughout the day in real time. Even when data is encrypted, an ISP can still see the websites that a customer visits, how often they visit them, and the amount of time they spend on each website. Using this information, they can piece together enormous amounts of information about an individual – including private information such as a chronic medical condition or financial problems.

There are certain basic responsibilities that come with providing an on-ramp to the Internet for customers.

Consumers who wish to limit what their ISP can view should not be limited to websites that utilize encryption.

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.

Response: Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. The Notice of Proposed Rulemaking we adopted earlier this year proposes updating our rules implementing section 629 to allow device manufacturers and other innovators to develop devices or software that will give pay-TV subscribers new ways to access the content they have purchased. We took this action because consumers have few alternatives to leasing set-top boxes from their pay-television providers. The statutory mandate is not yet fulfilled. This lack of competition has meant few choices and high prices for consumers.

The new proposed rules would create a framework for providing device manufacturers, software developers, and others the information they need to introduce innovative new technologies, while at the same time maintaining strong security, copyright, and consumer protections. The proposal was not put forward to benefit any particular company, it was created because consumers deserve better.

As the video ecosystem evolves it should be creating more opportunities for independent and minority-owned programming. By using the set top box as a way to limit program carriage, however, MVPDs constrict opportunities.

Thus far, our record is replete with comments from minority programmers who have been locked out from carriage on traditional cable networks. Our proposal would provide minority and independent programmers with an equal opportunity to reach their audiences. The proposal would facilitate competition in interfaces, search functions, and integration of programming sources, all of which would provide programmers with a greater ability to find audiences and consumers with a greater ability to access independent and minority programming. For those few independent and minority-owned programmers who already have carriage on the traditional pay-TV system, nothing in the Commission's proposal disrupts existing contractual relationships between programmers and MVPDs. The proposal also seeks to ensure that the privacy protections that exist today will also apply to competitive navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent.

The proposal tentatively concludes that third-party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that manufacturers must certify they are in compliance with the same privacy obligations as pay-TV providers. The FTC and a group of state attorney generals each submitted constructive comments stating that they would be in a position to enforce the privacy protections, similar to how privacy protections are enforced today for apps and devices.

As for the notion the FCC is doing the bidding of others, this proposal is about one thing: consumer choice. The proposal is intended to pave the way for software, devices and other innovative solutions to compete with the set-top boxes that most consumers lease today.

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?**

   Response: Let me assure you that the proposal seeks to ensure that the privacy protections that exist today will also apply to alternative navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent.

   The proposal tentatively concludes that third-party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that manufacturers must certify they are in compliance with the same privacy obligations as pay-TV providers. The proposal asks a number of questions about how best to enforce such a requirement, including whether an independent entity should validate third-party manufacturer's certifications, whether the Commission should maintain the certifications, and what the appropriate enforcement mechanism should be if there are any lapses in compliance with any certification. The FTC and a group of state attorney generals each submitted constructive comments stating that they would be in a position to enforce the privacy protections, similar to how privacy protections are enforced today for apps and devices. The NPRM seeks comment on what the appropriate recourse should be if a third-party does not adhere to the privacy protections. We seek to implement a rule that protects the consumer.

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?**

   Response: The request for mapping capabilities in our budget request will improve the FCC's retention and use of data it collects. Currently, the FCC's geospatial data is located in a variety of shared network drives and databases; much of it is on legacy infrastructure that is at or nearing its end of life. These data files are very large and are causing data storage capacity challenges. Additionally, the distributed geospatial web applications increase system complexity and result in unnecessary distribution and/or duplication of data sets.

   The FCC's best option to address these challenges is to centralize the data into one modern cloud-based hosting solution that will keep the data organized, secured, and accessible for all FCC stakeholders. In addition, centralizing the data allows for increased transparency and interoperability across the FCC for all geospatial projects. Using a common repository, the FCC will also be able to create standardized geospatial data sets for commonly used data (e.g., Census). This improvement would allow FCC users to know where to download the data directly or have the ability to run their work on the server, thus eliminating duplicate data on shared networks and possibly eliminating redundant work.

   Additionally, this platform will allow for the creation of standard maps to accommodate the growing need of

rapid release maps. If the FCC receives the necessary funding for these improvements, the FCC will be able to reduce the time spent on GIS development and standardize the way the maps appear. The improvements will also allow for common features on each map, such as download options and base maps, resulting in a better user experience. In its FY 2017 Budget submission, the FCC is requesting a one-time amount of $800,000 for implementation and an increase to the base of $400,000 for continual operation and maintenance.

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?**

   Response: Congress has established a series of sector-specific privacy laws, including those found in the Communications Act. The result is lots of different models tailored to the industry and relationships at issue. For example:

   - The HIPAA rules require written consent for sharing of medical information by your medical providers;
   - Federal education privacy rules generally require express affirmative consent of parents or guardians for sharing of most student information; and
   - The Do Not Call regime—which is the joint responsibility of the FCC and the FTC—allows consumers to opt-out of telemarketing calls.

   In some cases, what is appropriate for one industry or context may not be appropriate for another. The FCC's expertise is with respect to communications networks – including those providing Internet access – and that is the focus of our rulemaking.

3. **Should the FTC impose the same requirements on other companies in the Internet ecosystem that the FCC imposes on ISPs?**

   Response: The FCC is not looking to set the standard for all information exchanged on the Internet. Instead, consistent with our statutory authority under Section 222 of the Communications Act, we are focused on the customer-broadband provider relationship.

   The goal of the NPRM is for any final rules that the Commission may ultimately adopt pursuant to Section 222 to ensure that consumers know what information ISPs collect about them, how that information is shared, and how they can exercise choice over what is disclosed to third parties. The NPRM seeks comment on the best way to achieve this goal.

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?**

   Response: The FTC has demonstrated great leadership in the area of protecting the privacy of consumers. Where it has sufficient authority, it has adopted rules to ensure that consumers and business have clear guidance about the rules of the road. Where it does not have sufficient rulemaking authority, or where companies have violated its rules, the FTC has brought enforcement actions. Our proposed approach is

consistent with that approach and draws on much of the FTC's privacy work. For example, both agencies have structured their privacy frameworks around the same principles of transparency, choice, and security. Moreover, the FCC's proposed rules are consistent with the privacy framework the FTC laid out in its 2012 report entitled, "Protecting Consumer Privacy in an Era of Rapid Change."

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.**

   Response: There were no instructions given to reduce our pirate radio enforcement. Pirate radio enforcement actions continue to make up the largest group of actions in the Bureau – about 20% of Enforcement Bureau actions overall.

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?**

   Response: To clarify, the Enforcement Bureau's March 1, 2016 Enforcement Advisory on pirate radio issues observed that pirate radio stations "potentially prevent[] listeners from hearing important Emergency Alert System (EAS) warnings aired by [licensed] broadcasters." To date, we have no evidence that interference from a pirate radio station actually has prevented listeners from hearing an EAS alert. Even if a pirate prevents listeners from hearing the EAS alert on one licensed station, other stations in that same area will also carry that alert. Nevertheless, we take pirate radio interference seriously. As noted elsewhere, we continue to take strong enforcement action against pirates, with particular focus on pirate radio operators causing interference to licensed broadcasters, among others.

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.**

   Response: The Commission's pirate radio enforcement work primarily occurs in two metropolitan areas – New York and Miami. The number of engineers in the field offices for those locations will remain constant or increase from FY 2015 levels, allowing the Enforcement Bureau to continue its pirate enforcement in those areas. Moreover, we are updating our investigative equipment to increase our efficiency and reduce the need for more personnel. Nevertheless, we note that Congress has denied the Commission's request for more resources since 2009, resulting in the lowest FCC staffing levels in 30 years. In these circumstances, we use the resources that are appropriated to us as efficiently as possible to ensure that we are prioritizing our efforts to enforce the mandates of the Communications Act and the Commission's regulations and orders.

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.**

Response: The Enforcement Bureau currently has two attorneys whose primary responsibility is field enforcement matters, including pirate radio actions. Those attorneys are located in Washington, DC and Gettysburg, PA. In accordance with the Field Modernization Order that was approved by the Commission last year, we expect to add a third attorney to this team soon.

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 issues					
Number of NALs issued					
Number of Forfeiture Orders issued					
Number of Equipment Seizures					

Response:

	2012	2013	2014	2015	2016 (through 5/26/16)
Number of NOUOs issues	139	196	137	110	38
Number of NALs issued	19	4	5	6	0
Number of Forfeiture Orders issued	16	13	6	2	5
Number of Equipment Seizures	2	3	7	0	0

Although some recent numbers may be lower than prior years, that reflects our change to a smarter, more targeted enforcement. Rather than using our limited resources to pursue enforcement actions indiscriminately, without considering the scope or impact of the violations, we are focusing those resources on the worst actors. Thus, we no longer issue repeated warning letters or Notices of Unauthorized Operation (NOUOs) against the same pirate. Instead, we engage in progressively stronger enforcement against these individuals—from initial warning letters, to monetary forfeitures, to equipment seizures. While this may result in fewer warning letters, it allows us to focus our limited resources on getting the worst actors off the air.

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.

Response: Currently, there are three Enforcement Bureau agents working in the New York field office and we expect to add two additional agents to the New York office this year. That would total five agents, which is more than in recent years. There were three agents working in the New York field office in 2012. The number of employees increased to four in 2013, 2014 and 2015. In Miami, we expect to preserve the current number of agents.

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?**

    Response: While any unlawful radio operation may be subject to Commission enforcement action, we, like other law enforcement agencies, do not have the resources, nor can we practically pursue every potential unlawful action. As with all our enforcement matters, we evaluate each pirate complaint on its own merits. While some matters require immediate action (e.g., ongoing interference to public safety frequencies), in other cases, we weigh the resources required to pursue an action in light of competing demands for enforcement resources. For example, the same agents who work on pirate radio matters also are called upon to resolve all enforcement actions in the area, such as interference to weather radar systems at New York's metropolitan airports, interference to marine distress frequencies off the coast of New York, interference complaints impacting police and fire communications in New York, and interference complaints from commercial wireless carriers that may impact tens of thousands of consumers in the New York region.

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?**

    Response: Pirate radio operations are *per se* unlawful. Accordingly, it is unnecessary to evaluate pirate operations for compliance with rules governing FCC licensees such as RF radiation, EAS, and public file. As you know, the Commission's budget has remained essentially flat since 2009 and we are currently at the lowest FTEs in more than 30 years. The Enforcement Bureau strives to use its resources as efficiently as possible to ensure compliance. Our pirate actions therefore focus on obtaining compliance by shutting down the pirate.

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?**

   Response: There is no doubt that many actors in the online ecosystem collect and share lots of data. Professor Swire's paper offers a window into the data collection practices of a number of different types of entities in that ecosystem. It would have been helpful if it had provided a broader and deeper analysis of the data that ISPs can and do collect. An ISP handles all network traffic, which means it has an unobstructed view of all of unencrypted online activity (such as webpages visited, applications used, and the times and date of Internet activity). On a mobile device, an ISP can track the physical and online activities throughout the day in real time. Even when data is encrypted, an ISP can still see the websites that a customer visits, how often they visit them, and the amount of time they spend on each website. Using this information, they can piece together enormous amounts of information about an individual – including private information such as a chronic medical condition or financial problems.

   There are certain basic responsibilities that come with providing an on-ramp to the Internet for customers. Consumers who wish to limit what their ISP can view should not be limited to websites that utilize encryption.

2. **Chairman Wheeler, I understand that a lot of robocalls or automated text messages are an unwelcome part of modem 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?**

   Response: Last December, I circulated a proposal to my fellow commissioners that would address requests from the Edison Electric Institute and American Gas Association. My proposed decision would address alerts related to service outages and repairs, among other things. In the meantime, robocalls and automated text messages that relate to an emergency, such as a tornado, do not require prior express consent under the TCPA and the Commission's rules. Utilities may, and should, alert their customers to emergencies without concern about TCPA liability.

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?

Response: The *Rate-of-Return Reform Order* adopted by the Commission was the result of a bipartisan effort, aided by the rate-of-return carriers themselves, to expand rural broadband deployment by modernizing the USF high-cost support program for rate-of-return carriers, including by providing support for standalone broadband. Importantly, no carrier is required to adopt the model; it is an *entirely voluntary* option. For rate-of-return carriers that do not elect model-based support, the Order modernizes the Commission's embedded cost support mechanisms to encourage broadband deployment and support standalone broadband. I believe the package of reforms in the recently adopted Order will resolve the stand-alone broadband issue.

In addition, the Commission has required that as a condition of receiving high-cost support, carriers must offer voice and broadband services in supported areas at rates that are reasonably comparable to rates for similar services in urban areas. We annually monitor whether carriers are offering service in rural areas that are reasonably comparable to rates for that same service in urban areas. The Wireline Competition Bureau conducts a survey of urban fixed voice and broadband rates and publishes a reasonable comparability benchmark for both fixed voice and broadband services based on the data received. Support recipients are required to report that they have fixed voice and broadband rates at or below these reasonable comparability benchmarks.

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?**

Response: To be clear, in complying with Section 629 the Commission is not reviving what was once called "AllVid." AllVid was a 2010 proposal that would have required MVPDs to deploy new, government-designed equipment.

The goal of this rulemaking is to promote competition, innovation and consumer choice. It will not alter the rights that content owners have under the Copyright Act; nor will it encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements. For guidance about what these requirements entail, all market participants can consult a series of Federal court decisions made over the past several decades that have carefully distinguished non-infringing uses of copyrighted video content from infringing uses.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives

consumers many convenient ways to purchase and view this content. The Commission's proposal will lead to competition that will improve consumer choice while respecting and protecting the exclusive rights of content creators.
Let me also assure you that the proposal seeks to ensure that the privacy protections that exist today will also apply to alternative navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent.

The proposal tentatively concludes that third-party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that manufacturers must certify they are in compliance with the same privacy obligations as pay-TV providers. The proposal asks a number of questions about how best to enforce such a requirement, including whether an independent entity should validate third-party manufacturer's certifications, whether the Commission should maintain the certifications, and what the appropriate enforcement mechanism should be if there are any lapses in compliance with any certification. The FTC and a group of state attorney generals each submitted constructive comments stating that they would be in a position to enforce the privacy protections, similar to how privacy protections are enforced today for apps and devices.

As for the impact the proposed rules may have on small providers, the NPRM seeks comment generally on the relative benefits and costs of the proposed rules as well as alternative approaches, and on how the Commission can ensure that any rules we adopt are not overly burdensome to MVPDs, including small providers. The NPRM specifically asks how the proposed rules could affect small MVPDS and proposes to exempt all analog cable systems from the new requirements and seeks comment on the American Cable Association's proposal to exempt MVPDs serving one million or fewer subscribers from any rules.

The notice-and-comment process, as well as subsequent ex parte communications, will constitute the most complete and thorough examination of this issue ever undertaken or contemplated.

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?**

   Response: The FCC's authority to regulate communications has always existed alongside content owners' rights to control the duplication, distribution, or performance of their works. The co-existence of intellectual property and communications laws reflect Congress' effort to maintain a balance between the "interests of authors and inventors in the control and exploitation of their writings and discoveries" on the one hand, and on the other hand, "society's competing interest in the free flow of ideas, information and commerce."

   Starting with broadcast, and continuing with cable, satellite, and the internet, the FCC has for more than 80 years regulated networks that content owners use to transmit their works to the public. In these activities, the Commission has always recognized the statutory rights of content owners and has pursued policies that encourage respect for these rights. In addition, several FCC-related statutes explicitly prohibit the alteration of broadcasts or the theft of cable transmissions that contain copyrighted works.

I am confident that these FCC-specific authorities and well-practiced contractual arrangements will safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must-carry and of the essentially contractual regime governing retransmission consent, for example.

I would like to clearly state that the final set of rules in this proceeding will contain bright line rules that: (1) protect the negotiated terms between programmers and MVPDs, including compensation; (2) protect copyright and usage rights by requiring all apps and devices to abide by usage rights negotiated with MVPDs; and (3) protect content by requiring that apps and devices use a robust content protection system to prevent piracy and manipulation of the video stream.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created a brand new and profitable market – the videocassette and later the DVD market – for content owners. Our rulemaking will ensure that this rapidly-changing industry continues to strike the proper balance between property rights and consumer choice. None of us can predict exactly what the video marketplace will look like 10 or 20 years from now, but the goal of this rulemaking is that it will be a healthy ecosystem that supports a wide variety of diverse content and gives consumers many convenient ways to purchase and view this content.

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?

   Response: While I cannot commit to taking action within the timeframe you suggest, I can assure you the Commission staff is conducting a comprehensive review of the filing.

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?

   Response: It is my goal to complete this proceeding by the end of this year. The resolution of the business data services (special access) proceeding is a high priority at the Commission and we are moving forward with all due diligence to conclude this proceeding as expeditiously as possible while ensuring full consideration of the record.

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?

Response: Worker safety in the vicinity of radiofrequency sources continues to be an important issue. Last year, I directed staff to complete a draft order for Commission consideration that deals with this and other RF exposure issues. As our work was underway, we heard from a number of parties with regard to worker safety matters. Some of the concepts and solutions discussed represented new or novel ideas not fully explored in the current record. Accordingly, the Commission's staff is currently revising its draft to potentially include consideration of these or other new approaches in our forthcoming decision. We believe that additional thoughts and input on this matter are potentially important and warrant what we expect is only a short additional delay in issuing a decision that protects workers in a meaningful fashion.

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.**

Response: The LNPA contract (referred to as the Master Services Agreement) was filed in the public record of this proceeding by the North American Portability Management LLC and Telcordia on March 31, 2016, and accessible to participating parties shortly thereafter under the terms of the Bureau's *Second Protective Order*. The Bureau, following Commission precedent, balanced the need to allow companies to keep their information confidential with the need for the public to participate in the proceeding. Parties who file Acknowledgements to the Protective Order may have access to the MSA, are able to comment on it, and are able to discuss it (without revealing confidential material). The Commission regularly issues protective orders that contain these restrictions, with the exception of the added restrictions for Security Documents, which is an issue unique to this matter. In addition, Telcordia and the NAPM re-filed the contract with substantially fewer redactions on April 25, 2016, making much of the language of the Master Services Agreement broadly available to all members of the public.

a. Will the new LNPA vendor be required to provide this critical service to update the ALI database?

Response: As the Commission stated in the March 2015 *Selection Order*, we will ensure that the transition to a new LNPA vendor does not disrupt service to public safety, industry, the law enforcement community, or the public. As the Commission moves forward with this process, we anticipate that no functionality or service will be lost in the transition from one provider to the next.

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.

Response: The Commission's process for adopting final rules is consistent with long-standing FCC rules and procedures and the requirements of the Administrative Procedure Act. This process is designed to promote transparency in the Commission's actions while preserving space for the deliberative process. Transparency is incredibly important, which is why a robust public comment period is built into all rulemakings. At the same time, it's essential that this process allow for honest deliberation so that Commissioners can review and discuss text of proposed and final rules.

Most major items are considered at the Commission's monthly open meetings. My office circulates draft Notices of Proposed Rulemakings (NPRMs) three weeks before an open meeting. NPRMs provide notice to the public about what is under consideration and generally include proposed rules, tentative conclusions, and a host of questions seeking comment on related issues. During that three-week period before the vote on an NPRM, the Commissioners have the opportunity to engage with each other confidentially, and to ensure that the NPRM fully reflects the back-and-forth of those deliberations.

After an NPRM is adopted by the Commission, there are multiple opportunities for the public to participate – comments, reply comments, and generally a significant period for *ex parte* filings and meetings. And, of course, every single one of these pages of filings is available online for public scrutiny and comment. The goal of the process is to build a fulsome and thorough record examining the issues raised in our NPRM.

Once we have built this record, we may conclude that new rules would further the public interest. Just as we would do for an NPRM, my office will circulate draft orders and draft final rules three weeks before an open meeting. During that three-week period before the vote, the Commissioners have the opportunity to engage with each other confidentially and to ensure that the written order and final rules fully reflect the back-and-forth of those deliberations. The confidentiality of Commissioners' internal deliberations is a critical part of the process. Allowing the Commission to engage in frank, non-public conversations improves the decision-making process, just as receiving public comments boosts transparency and the Commission's expertise.

b. Please explain the Commission's rule and policies regarding the disclosure of non-public information.

Response: Section 5(a) of the Communications Act makes the Chairman the "chief executive office of the Commission."[1] One of the responsibilities of the chairman is "generally to coordinate and organize the work of the Commission in such a manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission."[2] Based on this statutory authority, the Commission has delegated to the Chairman "the responsibility for the general administration of internal affairs of the Commission."[3] In practice, this means that the Chairman is responsible for the day-to-day management of the Commission. In this supervisory, executive role, I take many actions every day to make sure that the agency operates efficiently and furthers the goals of the Act. Authorizing the release of nonpublic information when it would be in the interest of the agency is one of the many administrative tasks I and past FCC chairs have performed pursuant to this delegated authority.

While the FCC has an obligation to protect sensitive information and our deliberative process, we also have a

[1] 47 U.S.C. § 155(a).
[2] *Id.*
[3] 47 CFR § 0.211.

responsibility to be open and transparent about our activities. As a general mater, the FCC may choose to release nonpublic information when we think it will promote the discussion and understanding of important policy issues, but do no harm to our internal decision making. Described below are examples of situations in which the Office of the Chairman has decided that disclosure would be in the interest of the agency:

- When it is necessary to coordinate our activities with other Federal agencies or non-Federal law enforcement authorities;
- When the FCC consults with outside experts on mergers and other matters;
- When the FCC briefs Members of Congress and their staffs about draft agenda items or circulates pending before the Commission;
- When the FCC Commissioners or staff provide high-level summary information in speeches, blogs, fact sheets, or press briefings about agenda items pending before the Commission that are of significant public interest; and
- When the FCC publicly releases information about the Commission's internal operations in order to foster a conversation about FCC process reform.

To address one of these examples in further detail, Commission practice for several decades has been to brief reporters on the substance of complex and important Commission activities on the record, as well as on background. Much of what the Commission does can be highly technical in nature, so the media relations staff must be able to explain complicated issues in an understandable way. These briefings are meant to enhance transparency into the Commission's actions and further the public discussion on important issues before the Commission. Of course, once information is authorized for release, it is no longer considered non-public information.

The Honorable Ben Ray Lujan

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?**

Response: The Commission required that, if a document already exists in a searchable format, entities must upload the document to the online file in that format to the extent feasible. We declined to implement a standard format for the online file that would make the information more easily searched and analyzed, however. Instead, we determined we would prioritize our efforts to expand and upgrade the online file database before considering other improvements. The expanded online file requirement will take effect on June 24, 2016, requiring broadcast radio, cable television, and satellite television and radio to join broadcast

television stations in using the online public file.

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?**

Response: At my direction, Commission staff is investigating what efforts are necessary to improve the searchability and machine-readability of the contents of the online public file. Given the budgetary challenges currently facing the Commission, I cannot commit to a specific timeframe for us to take action, but share your interest in improving the usability of the online public file.

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 carries 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?**

Response: I am committed to continue working with you to expand broadband access to people living on Tribal lands. As you note, the Commission recently adopted an Order to modernize universal support for rate-of-return carriers. A Further Notice of Proposed Rulemaking adopted with the Order specifically seeks comment on additional reforms, including how to further promote broadband investment and deployment on unserved and underserved Tribal lands. I can commit to taking action on this important issue before the end of 2016.

    b. **What other steps is the FCC taking to drive investment into Indian Country?**

Response: The FCC is committed to driving investment into Indian Country. As you know, in light of the persistent affordability issues with respect to telephone service on Tribal lands, the Commission's rules allow for enhanced Lifeline support for residents of Tribal lands. This enhanced Lifeline support provides qualifying residents of Tribal lands up to $34.25 towards the cost of service. As a result of new rules adopted in the Lifeline Modernization Order, qualifying residents of Tribal lands will be able to apply, for the first time ever, the $34.25 support amount

towards bundled voice/broadband and standalone broadband plans.

The Commission also has adopted initiatives to drive investment in mobile broadband on Tribal lands. For example, in 2014 the FCC's Tribal Mobility Fund Phase I reverse auction made up to $50 million in one-time funding available to Tribal lands to accelerate mobile broadband availability. In addition, both the Tribal Mobility Fund Phase I and the general Mobility Fund Phase I made a 25 percent bidding credit available for Tribally-owned or controlled providers seeking support.

Further, since 2000 the Commission has administered a Tribal Land Bidding Credit program in wireless spectrum auctions. The credit serves as a discount for a qualified winning bidder proposing to deploy wireless facilities on a Tribal land. The Tribal Land Bidding Credit was used by a bidder in our recent AWS-3 Auction and is available to bidders participating in the Incentive Auction.

The FCC has also taken a number of steps to better track the disbursement of universal support to benefit Tribal communities. For example, we are in the process of updating our application forms for the E-rate and Rural Health Care programs to collect better data on the disbursement of funds to schools, libraries, and rural health entities serving Tribal communities.

The Commission is also committed to a robust consultation process with Indian Country. In 2016, the Commission will hold five regional Tribal consultation and training workshops. The United States Department of Agriculture will be invited to each of these workshops. The Commission is committed to working with our Tribal partners and with USDA to ensure that the 2016 Tribal consultation and training workshops, as well as those in future years, provide a comprehensive and coordinated approach 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 modem 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?**

Response: The Commission received a petition from the Edison Electric Institute and American Gas Association to clarify the TCPA's application to alerts about service outages and repairs, among other things. The Commission sought comment on the petition and last December I circulated a proposal to my fellow commissioners that would address the request. The decision remains pending before the full Commission.

The Honorable Chris Collins

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.

Response: We believe you may be referring to a non-public 2014 email from a former regional director in the Field. That email does not reflect any Commission directive with which I am aware, and, in fact, pirate radio continues to be a major part of the Enforcement Bureau's portfolio. Last year, 20% of the Enforcement Bureau's activities were directed towards pirate radio. That's more than any other area of enforcement. As we have stated, consistent with the Bureau's overall policy, we are focusing our pirate enforcement efforts on the worst actors and continuing to issue Notices of Apparent Liability for Forfeiture and Forfeiture Orders against pirate radio operators.