

**FCC Commissioner Mignon L. Clyburn**  
**Response to Additional Questions for the Record**  
**July 12, 2016 Hearing before the Subcommittee on Communications and Technology**  
**“Oversight of the Federal Communications Commission”**

**The Honorable Pete Olson**

1. According to a Pew Center study on the state of news media this year, from 2004-2014, more than 100 daily newspapers across the country shut down completely. And that statistic doesn't include Texas newspapers like the Houston Post, the San Antonio Light and the Dallas Times Herald which were all shuttered previous to 2004. And yet the FCC's media ownership rules, which maybe coincidentally have not been updated in over a decade, still reflect a local media landscape that predates smart phones, broadband, the iTunes music store and the existence of the Houston Texans NFL franchise.
  - a. Congress has mandated that every four years the FCC study the media ownership rules and get rid of the ones that are no longer necessary because of competition. It seems to me that one of the easiest to finally do away with, which also happens to be a rule that previous FCC chairmen have said is no longer needed, is the ban on newspapers being owned by a television station in the same local market. I think everyone here can agree that certain economies of scale, like shared office space and advertising staffing, can be gained by allowing a local broadcaster and a local newspaper to be owned by the same company. But the Commission's latest Media Ownership review outline still retains this outdated and unnecessary ban. Will the FCC finally agree to move on from this outdated ban and repeal the newspapers/broadcaster cross-ownership ban as part of the current ownership review?

Thank you for the question, Congressman Olson. On August 10<sup>th</sup>, the Commission adopted a Report and Order which concluded the Commission's 2010 and 2014 Quadrennial Review proceedings. As I stated in voting to approve the Order, as the former publisher and general manager of a small Charleston-based weekly newspaper for 14 years, I am very much aware that the newspaper business is not what it used to be. Nationally, the number of daily newspapers over the past 40 years has decreased by nearly 25 percent. Circulation has fallen from 60.7 million in 1975 to 40.4 million in 2014. To address the concern of a failed or failing newspaper or broadcast station market and the impact on the local media landscape, the Commission adopted an exception to its newspaper/broadcast cross-ownership rule that can prevent these voices from vanishing by allowing for an injection of new investment capital into the particular news outlet.

2. Shouldn't the FCC adopt broadband privacy rules that are consistent with the FTC's privacy framework and the Administration's 2012 Privacy Report and Consumer Privacy Bill of Rights -i.e., a technology-neutral approach that applies consistent rules based on the type of data and how it's being used, and

**requires opt-in consent solely for the use and disclosure of sensitive information such as financial, health, and children's data, as the FTC has determined -rather than pursue the radical departure from this highly successful approach that the FCC's NPRM is proposing, especially since this departure would deprive consumers of innovative and lower-priced offerings that they routinely receive today, block ISPs from bringing new competition to the highly concentrated online advertising market, and provide substantial ammunition to those seeking to legally challenge and dismantle the recently approved EU-US Privacy Shield by calling into question the adequacy of the FTC's privacy framework which is a key component of this important international agreement?**

When it comes to protecting consumer privacy, transparency, notice, choice, and security are principles I believe we can all agree upon. Those principles have been the basis of the FTC's approach to privacy, and the Administration's approach to privacy. They were part of the NPRM's approach to privacy, and should underpin the approach taken in whatever Order the Commission adopts.

- 3. I want to ask you about the new broadcast standard -Next Generation Television – which the NAB and the Consumer Technology Association submitted to the FCC for approval in April. This new optional standard has the potential to bring new benefits to consumers and will help broadcasters retain their important role in providing local news and additional services to viewers. Can you comment on this new standard and give us a sense of when the FCC will issue a proposed rule on adoption of this innovative optional new technology?**

The petition is currently before the Commission's Media Bureau. When it reaches the full Commission, I will be looking at what ATSC 3.0 can do, to lead to greater diversity on the public airwaves. By some accounts, today's six megahertz broadcast channel, could be used to distribute as many as six to eight separate high-definition channels. This could lead to new voices in the market, or provide an option for the many LPTV stations I have met with, who are concerned about their future in broadcasting. I look forward to continuing to learn more about the ATSC 3.0 standard from stakeholders, and the opportunities it may present to fulfill my goal of greater viewpoint diversity.

### **The Honorable Mike Pompeo**

- 1. The White House released a privacy report in 2012 which endorsed a 'level playing field for companies and a consistent set of expectations for consumers.' Also, the FTC explained in its 2012 Privacy Guidelines that "any privacy framework should be technology neutral" and noted that ISPs are just one type of large platform provider.**
  - a. Do you believe consumers' expect the same information**

**about their online activity to be subject to different privacy rules depending upon the type of entity collecting their information online?**

Consumers expect that regardless of who is collecting their information, that they will receive transparent notice and choice, and that their information will be protected regardless of who is collecting or using their information. The Commission's proposal does exactly that. Moreover, the Commission proposed a framework that is technology neutral—the same privacy protections apply regardless of the underlying network technology in use by the broadband provider. I would support adoption of a framework that protects consumers and does not discriminate based on the underlying broadband technology used by the broadband provider.

- 2. Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Services of federal student loan debt are legally obligated, by their contracts with the Department of Education, to reach out multiple times to borrowers to help them understand all of their options as they face their obligation to repay debts. Yet, at the same time you have the TCPA, which holds those same companies strictly liable when they in good faith call a borrower who has consented to that outreach but the borrower has changed his/her number and so the call goes to someone who now answers to that reassigned number. On July 5, the FCC released its Declaratory Ruling in which you said, "we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government's instructions."**

- a. Is it your opinion that student loan servicers, while following their legal obligations in their contracts with the Department of Education, should be exempt from TCPA? Yes or no; and if no, why?**

As you know, the *Bipartisan Budget Act of 2015* gave the Commission very specific instructions regarding robocalls “made solely to collect a debt owed to or guaranteed by the United States.” The provision which directly modifies the TCPA, resulted in the Commission's adoption of an August Order setting a limit of three robocalls per month, with explicit flexibility given to federal agencies to request a waiver seeking higher volume limits if needed. It should also be noted that this Order included debt servicers who contract with the government in the statutory exemption from the TCPA's consent requirement. This was requested by servicers and reflects the view that these calls can benefit consumers.

**The Honorable Billy Long**

- 1. It is clear that the TCPA, which became law in 1991, is sorely out of date and in need of modernization. In your opinion, what parts of this existing law should**

## **Congress update?**

During the 25 years since Congress passed the Telephone Consumer Protection Act (TCPA), mobile phone subscriptions have increased by 3,567 percent. Similarly, today, nearly half of U.S. households report having only wireless telephone service. Given consumers' increasing reliance on mobile devices, I believe it would be appropriate, should Congress choose to update the TCPA, to look at how the rules should be applied to mobile voice calls and text messages.

Additionally, I believe it may be appropriate to examine whether changes in statute would make it easier for the Commission to identify violators of the TCPA and stop the increasing number of unwanted robocalls.

### **The Honorable Bobby Rush**

- 1. I understand and appreciate the Commission's desire for strong consumer protection standards, including a broad definition of personally identifiable information, but do you have any concerns about second and third order unintended effects on things that help consumers such as Caller ID or the protections provided by the Telephone Consumer Protection Act? If so, what, if anything, is being done to mitigate these effects?**

The Commission is taking a careful and thoughtful approach to privacy, including any potential interplay between section 222 and other provisions of the Act, such as the sections 225 (Telephone Consumer Protection Act) and 227 (Truth in Caller ID Act). In conducting this rulemaking, the Commission must read section 222 in the context of other Congressional mandates and the public interest. For example, the Commission's Caller ID rules reflect a careful balancing of a caller's need for privacy of a call by allowing them to not transmit their caller ID, with the information needs of a called party by allowing them to choose not to receive calls without caller ID information. A similarly attentive approach will be required here to ensure that the consumer protections provided by other statutory provisions are retained in the event that the Commission adopts rules regarding broadband privacy.

### **The Honorable G.K. Butterfield**

- 1. Commissioners, for the rural areas that require more broadband infrastructure investment, do you see any dangers if the Commission's final rule on Business Data Services (special access) fails to fully recognize the real cost to provide fiber and other BDS services?**

Thank you for the question, Congressman. It highlights the importance of getting this right. On one hand, the Commission has been presented with arguments that the lack of BDS reform has cost our economy \$150 billion over the past five years. On the other, are arguments that *any* reduction in BDS revenues would cost jobs and investment in broadband. The gravity of striking the right balance is not lost on me. We want to ensure that investment and innovation

continue and that consumers are not subject to BDS pricing that is born out of market power. This will serve as a guide post in evaluating whatever Order the Chairman ultimately circulates.

**2. If the order overshoots the mark, what could it do to rural economic development, jobs, and anchor institutions if BDS providers can't make the investment to provide service?**

The Commission has been presented with arguments that the lack of BDS reform has cost our economy \$150 billion over the past five years. If that is correct, rural economic development may already be depressed by high BDS prices, and BDS reform would be a boon for economic development in those areas. But, your question highlights the importance of getting BDS reform right.