

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

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 25, 2016

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Commissioner O'Rielly:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, July 12, 2016, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on September 8, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment

Attachment — Additional Questions for the Record

The Honorable Brett Guthrie

In your dissenting statement in the Video Navigation Choices proceeding, you stated that “the statutory authority on which this fantasy rests is equally far-fetched.”

1. Is the statutory authority you were referring to section 629 of the *Communications Act*?
 - a. When was section 629 added to the *Communications Act*?
2. Section 203 of H.R. 1555 as introduced on May 3, 1995, was entitled “competitive availability of navigation devices.” Was section 203 competitive availability of navigation devices included in the final bill that passed the House on August 4, 1995?
 - a. Did the Conference Agreement with respect to competitive availability of navigation devices indicate that “The conference agreement adopts the House provision...”?
 - b. Was the sponsor of H.R. 1555 and House Floor Manager for that bill then-Chairman of the House Commerce Committee Tom Bliley from Virginia, and was Chairman Bliley also the leading advocate for the adoption of the competitive availability of navigation devices provision that ultimately became section 629?
 - c. For whom did you work in the time period from May 3, 1995, until President Clinton signed the *Telecommunications Act of 1996* into law on February 8, 1996?
3. To what extent does your knowledge of the legislative history of section 629 and Chairman Bliley’s intent contribute to your conclusion that “the statutory authority on which this fantasy rests is equally far-fetched”?

The Honorable Pete Olson

1. It is not often that you hear from regulators to not expand their jurisdiction. However, both of you have expressed concern with the ISP privacy NPRM and reiterated that the Federal Trade Commission already regulates ISP privacy and it does it well.
 - a. Do you think the FTC is the better ISP privacy regulator? Can you elaborate?
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?

3. I want to ask 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 Honorable Mike Pompeo

1. Commissioner O’Rielly, Chairman Nunes and I sent a letter to Chairman Wheeler asking him a series of questions related to his set-top box proposal and cybersecurity. I’d like to ask for your response related to foreign manufacturers and software developers.
 - a. Under the current NPRM on set top boxes - How will the FCC determine whether a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S.?
 - b. How will the FCC determine whether such manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity?
 - c. If a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S., what legal recourse would the FCC have to stop the foreign entity from using or sharing the information?
2. Commissioner O’Rielly, to accommodate concerns of programmers, Chairman Wheeler has said that he would allow pay-TV providers to cut off content to consumer electronics and application providers that do not abide by certain conditions. That might stem further injury.
 - a. But the FCC would not be able to award damages to programmers to compensate them for the harm that has already occurred, correct?

- b. And while in some cases the FCC can assess fines that go to the Treasury, the FCC would not have jurisdiction over consumer electronics and application providers to assess even fines here, right?
3. 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?
4. 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?

The Honorable Gus Bilirakis

1. In March we talked about the uncertainty facing businesses of all sizes that have sprung up from applying the outdated TCPA to modern forms of communication. Some industries have been exempted from the rules, while others are still constrained with this uncertainty and are petitioning the FCC on an individual basis. Since it doesn’t appear that a TCPA overhaul is on the docket anytime soon, can we do more to expedite these petitions?
2. Commissioner O’Reilly, you’ve recently outlined over two dozen process related areas where the FCC could improve in terms of efficiency and transparency. Are mandatory, timely responses to petitions one of those improvements that could help businesses conduct their business with certainty?
3. I’m troubled by the outdated restrictions that remain in place after the required Quadrennial Review has finally been completed by the FCC. Can you explain what the

potential impact of not updating ownership rules means for broadcasters and newspapers that operate in the modern, competitive media marketplace?

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?

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 Honorable G.K. Butterfield

2. 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?
3. 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?