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Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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August 25, 2016

The Honorable Ajit Pai
Commissioner
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Commissioner Pai:

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

1. In your dissenting statement in the Video Navigation Choices proceeding, you stated in the context of the NPRM's reliance upon "open standards bodies" that "this proposal is likely to produce a stalemate—not a newly competitive market," and you cited this as the first and foremost problem. Why would reliance upon open standards bodies be such a problem?

The Honorable Pete Olson

1. It is not often that you hear from regulators to not expand their jurisdiction. However, 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 Pai, 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. 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?
 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?

The Honorable Gus Bilirakis

1. The TCPA is meant to protect consumers from invasions of personal privacy from unwanted phone calls. Businesses reliant on automated calls seek clarity in knowing their business practices are compliant with the law, and one such proposal would incentivize that independent service provider contracts allow for compliance monitoring programs in

order to ensure that their vendors who actually make phone calls to consumers are doing so lawfully at all times. However, there is some concern in the business community that implementing this type of oversight plan to ensure compliance may also open them up to potential liability if something goes wrong.

2. Do you think that businesses should be penalized for implementing programs with the goal on enhancing compliance under the TCPA? Would you support regulation or legislation permitting businesses to raise an affirmative defense during TCPA-related litigation in order to present evidence of the compliance enhancement programs they have implemented to govern the relationship with their independent, third party vendors?
3. Can you expand on your testimony that the Set Top Box proposal, as it stands, would have a severe impact for rural Americans? Would there be a noticeable decrease in competitive video options if this went into effect? How can the proposal be modified to mitigate the impact on smaller operators that serve more rural swaths of the country?

The Honorable Billy Long

1. Commissioner Pai, I would like to get your thoughts in comparing the FCC's existing set-top box proposal with the 'ditch the box' alternative approach that was recently presented to the FCC. The 'ditch the box'/apps approach appears to better reflect consumer preferences in the market and is consistent with the trend of consumers accessing competitive video over apps on a multitude of their devices. Would you agree that in comparison to the consumer apps approach, the FCC's current set-top box proposal will take years longer and cost significantly more to develop and implement? In addition, do you agree that the apps approach will accelerate innovation since it will enable rapid updates by both device manufacturers and Pay-TV providers?
2. 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 Anna G. Eshoo

1. Please provide me with answers to the following questions regarding your investigation into the Lifeline program.
 - a. What is the scope of your investigation into the Lifeline program? Please explain how it is not duplicative of the ongoing efforts by the FCC's Enforcement Bureau and the investigation being conducted by the Majority on the House Energy and Commerce Committee.
 - b. How much in taxpayer resources have you spent on this investigation to date?
 - c. When do you expect to conclude your investigation?

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

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?
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?