

**Questions for the Record**  
**from Subcommittee on Communications and Technology Hearing Entitled**  
**“Oversight of the Federal Communications Commission”**  
**July 12, 2016**

**The Honorable Brett Guthrie**

**Q1. 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?**

A1. The NPRM envisions that open standards bodies including all stakeholders would reach an agreement on consensus standards. But this proceeding has demonstrated that there is a stark divide among those stakeholders. That is why the Downloadable Security Technology Advisory Committee (DSTAC) was unable to rally around a single proposal. And that is why there has been such profound disagreement in the comments responding to the NPRM. Given this history, I do not believe that open standards bodies would be able to produce consensus standards. Rather, I believe that their deliberations would end in stalemate.

**The Honorable Pete Olson**

**Q1. 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. Do you think the FTC is the better ISP privacy regulator? Can you elaborate?**

A1. Yes, the FTC is a better privacy regulator than the FCC. For the past two decades, the FTC has applied a unified approach to all online actors. It’s shied away from highly prescriptive, industry-wide mandates in favor of a case-specific approach focused on harms to consumers. The FTC’s been quite active, carrying out “more than 150 privacy and data security enforcement actions, including actions against ISPs and against some of the biggest companies in the Internet ecosystem.” And it’s been so successful that the United States government has touted the FTC’s work to the European Union as sufficiently robust to protect online consumers against predatory privacy practices.

In contrast, the FCC is new to the online privacy beat, has no track record, has comparatively limited authority, and has proposed rigid mandates that may freeze some online innovation in place.

**Q2. 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?**

A2. Because consumers have a uniform expectation of privacy, I agree with you that the government should adopt a consistent set of privacy regulations in this area.

**Q3. 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?**

A3. I share your optimism about the ATSC 3.0 next-generation broadcast standard and believe that the Commission should quickly issue an NPRM proposing to give broadcasters the option of adopting this new standard. However, I do not control the Commission's agenda, and I do not know whether and/or when the Commission will move forward on this important issue.

### **The Honorable Mike Pompeo**

**Q1. 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.**

**Q1a. 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.?**

A1a. Under the current NPRM, I do not believe that the FCC would be able to determine whether a foreign manufacturer or software developer has transferred U.S. consumer, business, or government information outside of the United States.

**Q1b. How will the FCC determine whether such manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity?**

A1b. Under the current NPRM, I do not believe that the FCC would be able to determine whether a manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity.

**Q1c. 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?**

A1c. If a foreign manufacturer or software developer were to transfer U.S. consumer, business, or government information outside of the United States, I do not believe that the FCC would have any legal recourse that would be effective in stopping that foreign entity from using or sharing the information.

**Q2. 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 TCP A 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."**

**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?**

A2. I parted ways with my colleagues in that July 5 Declaratory Ruling because I think it is clear under federal law that student loan servicers—among other federal contractors—are “persons” subject to the TCPA. Nonetheless, last year’s budget deal included an exemption from the TCPA for calls “made solely to collect a debt owed to . . . the United States,” and I agree that student loan servicers are exempt from the TCPA’s prohibitions because of that exemption.

**Q3. 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.**

**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?**

A3. No. I can’t put it any better than Chairman Wheeler did, testifying before the House Energy and Commerce Committee’s Subcommittee on Communications and Technology in November 2015: Because consumers deserve “a uniform expectation of privacy,” the FCC should “not be regulating the edge providers differently” from ISPs.

### **The Honorable Gus Bilirakis**

**Q1. 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.**

**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?**

A1. The law should encourage companies to reduce the number of unwanted robocalls to American consumers. For example, I would support legislation to create a reassigned-numbers database that would enable good-faith callers to determine whether a consumer’s number has changed since that consumer gave prior express consent to receive calls from a company. I also see merit in legislation that would create a safe harbor for telephone companies that seek to reduce the number of fraudulent telemarketing calls received by consumers.

**Q2. 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?**

A2. The record compiled by the FCC makes clear that the set-top box proposal set forth in the NPRM would impose substantial costs on small video providers that disproportionately serve rural Americans

and that these costs would have a devastating impact on many of these companies. For example, the American Cable Association has told the FCC that the Commission's proposal, if implemented, would cause 200 of its members to stop offering video service or go out of business altogether. And other companies, in order to comply with these rules, would shift money away from rural broadband deployment. For these reasons, to rural Americans, the FCC's proposal would mean fewer video options and less broadband. The best way to avoid this would be for the FCC to abandon the misguided proposal set forth in the NPRM. But if it does not do that, the Commission should at least exempt small video providers from these onerous new regulations.

### **The Honorable Billy Long**

**Q1. 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?**

A1. I agree that the set-top box proposal set forth in the Commission's NPRM would take years longer to develop and implement than the consumer apps approach and would also be significantly more expensive. I also agree that the consumer apps approach would be friendlier to innovation than the FCC's proposal.

**Q2. 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?**

A2. I agree that the TCPA is sorely out of date and in need of modernization. I believe the Anti-Spoofing Act of 2015 would be a good start. I would also support legislation to create a reassigned-numbers database that would enable good-faith callers to determine whether a consumer's number has changed since that consumer gave prior express consent to receive calls from a company. And I see merit in legislation that would create a safe harbor for telephone companies that seek to reduce the number of fraudulent telemarketing calls received by consumers.

### **The Honorable Anna G. Eshoo**

**Q1. Please provide me with answers to the following questions regarding your investigation into the Lifeline program.**

**Q1a. 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.**

A1a. I commenced my investigation on the potentially dubious practices of Lifeline wireless resellers on April 18, 2016 in light of the Commission's investigation of Total Call Mobile. As I wrote in my first letter to the Universal Service Administrative Company, we learned how Total Call Mobile's sales agents repeatedly registered duplicate subscribers to the addresses of local homeless shelters and used fake Social Security numbers to register duplicate subscribers—all resulting in USAC's finding 32,498 enrolled duplicates. We learned how Total Call Mobile's sales agents repeatedly overrode the safeguards or the National Lifeline Accountability Database (NLAD)—abuse so far-reaching that at one point,

99.8% of Total Call Mobile's new subscribers were the result of overrides. We learned how Total Call Mobile heavily relied on Supplemental Nutrition Assistance Program (SNAP) cards to register subscribers—in large part because that program can so easily be abused. And we learned that Total Call Mobile was not alone: Its sales agents testified that they worked side-by-side with the sales agents of other Lifeline wireless resellers and that they learned how to exploit the program from sales agents and supervisors who worked at various points for still other Lifeline wireless resellers.

From the outset of my investigation, I have followed the evidence where it has led. For example, I've refined my investigation to target companies with seemingly anomalous results in the data and to examine rules and processes that appeared to invite exploitation. I have been coordinating my efforts with the FCC's Enforcement Bureau and the FCC's Office of the Inspector General, and they have assured me they would take the evidence I have uncovered into account as they pursue their independent investigations. My staff has also briefed the Majority on the House Energy and Commerce Committee on my office's investigation, per their request.

**Q1b. How much in taxpayer resources have you spent on this investigation to date?**

A1b. Commission staff has informed my office that to date, we have spent \$3.76 in postage to carry out this investigation.

**Q1c. When do you expect to conclude your investigation?**

A1c. I have not established any particular timeline.

**The Honorable Bobby Rush**

**Q1. 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?**

A1. I agree that the Commission's proposed definition of personally identifiable information is extremely broad in the privacy rulemaking and that restricting the use of all such information may in fact hurt consumers rather than help them. That is one of the reasons I dissented from the Commission's proposal. My colleagues who voted for the Commission's proposal would be in a better position than I to explain what, if anything, is being done to mitigate these effects.

**The Honorable G.K. Butterfield**

**Q1. 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?**

A1. Failing to recognize the true costs of providing special access services in rural America would likely lead the Commission to adopt rate caps in such areas that are below cost. Recent economic analyses by a variety of parties have shown that the assumptions in the original proposal do not reflect the actual cost of serving rural America.

**Q2. 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?**

A2. If the Commission sets rates below costs in rural America, that will dampen investment by incumbent carriers in rural America and drive out their competitors entirely. That means less deployment

and fewer jobs. That means economic stagnation, not growth. And that means slower speeds for anchor institutions, mobile data networks, and consumers.