

House Energy and Commerce Subcommittee on Communications and Technology
"Oversight of the Federal Communications Commission"
July 12, 2016

Commissioner Jessica Rosenworcel
Responses to Questions for the Record
Submitted September 8, 2016

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 But the Commission's latest Media Ownership review outline still retains this outdated and unnecessary ban. Will the FCC finally agree to move on from this outdated ban and repeal the newspapers/broadcaster cross-ownership ban as part of the current ownership review?

After careful consideration of the record, the FCC concluded in its August 10, 2016 Quadrennial Review Order that regulation of newspaper/broadcast cross-ownership within a local market remains necessary to protect and promote viewpoint diversity. At the same time, however, the FCC determined that an absolute ban on newspaper/broadcast cross-ownership would be overly broad and unnecessarily restrictive. To this end, the Quadrennial Review Order provided for a loosening of the ban on cross-ownership in three ways. First, the FCC adjusted the geographic scope of its existing rule in order to update old analog parameters to more accurately reflect the markets that newspapers and broadcasters actually serve. Second, in recognition of the fact that a proposed merger involving a failed or failing entity does not present a significant risk to viewpoint diversity, the FCC adopted an explicit exception to the newspaper-broadcast cross-ownership rule for proposed mergers involving a failed or failing broadcast station or newspaper. Third, the Quadrennial Review Order provided a

path forward for waivers of the newspaper/broadcast cross-ownership rule on a case-by-case basis, provided that applicants can show that the proposed merger will not unduly harm viewpoint diversity in the market.

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 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?

In our ongoing privacy proceeding, I believe the FCC should strive to identify how consumers can better understand the way their data is collected, what rules apply, and how they can protect themselves under the law. I believe doing this well requires harmonization—to the extent possible under existing law—with other federal authorities with privacy interests. To this end, the staff of the FTC Bureau of Consumer Protection filed comments in our privacy docket. The FCC needs to study this filing carefully and seek to incorporate their ideas to the extent feasible under our governing statute.

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 issue a proposed rule on adoption of this innovative optional new technology?

On April 13, 2016, America's Public Television Stations, AWARN Alliance, Consumer Technology Association, and National Association of Broadcasters filed a Joint Petition for Rulemaking asking the FCC to “amend its rules to allow broadcasters to use the signaling portion of the physical layer of the new ATSC 3.0 (Next Generation TV) broadcast standard, while they continue to deliver current-generation DTV broadcast service to their communities.” It raises a range of issues from the novel technical capabilities of a new broadcasting standard to the complex challenges of transitioning to a standard that is not compatible with existing consumer television sets. The petition was placed on Public Notice by the FCC on April 26, 2016. Comments and reply comments were filed on May 26, 2016 and June 27, 2016,

respectively. The FCC is currently evaluating the record in order to determine the appropriate next steps.

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?

In the broadband age, consumers should not have to be network engineers to understand who is collecting their data and they should not have to be lawyers to determine if their information is protected. For this reason, harmonizing FCC policies with other federal authorities with responsibilities for privacy is a responsible course of action. At the same time, however, different federal actors are responsible for implementing different federal privacy statutes. Consequently, it may not always be possible to ensure that privacy policies are the same in every circumstance. Nonetheless, we should strive to simplify the country’s consumer privacy policies and harmonizing them—to the extent reasonable under the law—is a good place to start.

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?

In the August 2, 2016 Order implementing Section 301 of the 2015 Budget Act, the FCC determined that while “calls by the federal government and its agents are excepted from the prior-express-consent requirement of section 227(b)(1),” calls by the federal government and its contractors are subject to limitations on frequency and duration adopted pursuant to section 227(b)(2)(H). As a result, calls made to collect a debt owed

to or guaranteed by the United States are exempt from the prior express consent requirement of the Telephone Consumer Protection Act, but are still subject to restrictions that the law authorizes the FCC to place on such calls. In the Order, the FCC restricted the number of federal debt collection calls to “three calls within thirty days while the delinquency remains or following a specific, time-sensitive event, with such calls also permitted in the 30 days before such an event (but not before delinquency).” However, the Order also provides that federal agencies, such as the Department of Education, “may request a waiver seeking a different limit on the number of autodialed, pre-recorded voice, and artificial-voice calls that may be made without consent of the called party.

The Honorable Billy Long

1. Commissioner Rosenworcel, in your statement in the Video Navigation Choices docket you stated that: "important questions have been raised about copyright, privacy, diversity- - and a whole host of other issues in a marketplace that has been tough for competitive providers to crack." Do you think the ditch the box proposal addresses these concerns better than the proposal in the NPRM?

As I have acknowledged previously, there are complex issues that need to be resolved in order for the FCC to successfully proceed with its video navigation proceeding and foster a more competitive consumer set-top box. That is why several alternative proposals that have been filed in this proceeding are under serious consideration. The FCC is still in the process of evaluating these proposals and gathering additional information to better understand how they work, resolve outstanding issues, and comply with the law.

2. *Broadcasting & Cable* of June 20, 2016 includes a story written by John Eggerton, the headline of which was "Rosenworcel: FCC Needs 'Another Way Forward' on SetTops." You were quoted in that article as saying: " ... it has become clear the original proposal has real flaws and as I have suggested before, is too complicated. We need to find another way forward." Does it appear that the "ditch the box"/apps based approach, which is based on an open industry standard available to all, provides a simpler, less complicated approach to achieving the goals of the Navigation Device NPRM?

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3. 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?

I agree. When the Telephone Consumer Protection Act was passed 25 years ago, there were less than 10 million cellphone subscriptions in the United States and the smartphone was a concept straight out of science fiction. Today, Americans are cutting the cord in increasing numbers and there are over three hundred million wireless connections in the United States. As a result, I believe it would be helpful to take a fresh look at the way the Telephone Consumer Protection Act treats wired and wireless calls differently. This distinction may have made sense at the time of passage, but it no longer reflects the ways consumers and businesses use communications technology.

Additionally, the Telephone Consumer Protection Act defines “automatic telephone dialing system” as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator, and (B) to dial such numbers.” This statutory language reflects the state of technology in 1991, not 2016—when this functionality is present in most smartphones. As a result, the application of the statute may now be much broader than Congress intended. Updating this provision to reflect the evolution of technology merits consideration.

The Honorable Kevin Cramer

1. Commissioner Rosenworcel, earlier this year before the Senate Commerce Committee you stated that you would not move forward on how to reform the Universal Service Contribution until after the Court’s make a ruling on the Open Internet Order. Given the Court’s recent decision will you commit, as Chair of the Federal State Joint Board that you will move forward on the Federal State Joint Board’s Recommendation on USF contribution reform before the end of this year?

Now that the DC Circuit has issued its opinion, the Federal-State Joint Board will continue its work with new resolve. Working with my state colleagues, we have set up a schedule for regular staff meetings this Fall, culminating in an in-person discussion in conjunction with the next regular meeting of state utility commissioners later this year. Although it is premature to say when the Recommended Decision will be complete, I can commit that work is underway to advance the referral and that progress will be made by the end of the year.

The Honorable David Loebsack

1. While addressing the nation’s transition to 5G you acknowledged that because 5G ‘signals carry a significant amount of data, they do not go far’ and thus require a network that connects these signals to the rest of the country/world. You also recognized the need for significant build-out referencing the elimination of obstacles in cell tower citing processes to facilitate 5G networks deployment and enable broadband speed offerings that are 10 times faster than today’s 4G services. Likewise, as you are aware, in order to make 5G deployment a reality, BDS will play a critical role in creating the vast web of high-speed backhaul connections necessary for robust 5G coverage and availability throughout the nation.

2. In contrast to today's mobile network which is supported by a macro-cell infrastructure, 5G will require a vast number of small cells, both in urban and rural America. This will require massive investment to deploy fiber-based Ethernet business data services connections to each of these small cells. Yet, at the very moment that the FCC is embarking on policies to accelerate 5G, it is also proposing a new regulatory framework to expand price regulation imposed on providers generally, and particularly in low-density rural areas with few businesses, could impact the economic viability of investment and deployment of new fiber-based Ethernet service.

3. Given the potential implications for high-speed data facility investment and deployment, should the FCC initiate a more comprehensive cost/benefit analysis of its proposed special access rules to better understand its potential impact on investment incentives for high speed fiber and Ethernet service buildout and availability? In determining the cost/benefit of new price regulations, should the agency consider whether it will ultimately advance or inhibit the speed of future 5G deployment and availability throughout the country? Would you support the FCC undertaking a more comprehensive and formal cost/benefit analysis of the recently proposed Business Data Services regulatory framework?

Four years ago, the FCC suspended aspects of its special access policies. The agency determined that its turn-of-the-millennium rules designed to provide greater flexibility for these services were not working as intended. So the FCC set off to update and modernize special access policy. To do so we collected data—lots and lots of data. In fact, we have assembled what might be the single largest dataset in the history of the FCC. In addition, following the issuance of our April 28, 2016 Further Notice, the agency has collected thousands of pages of comment and expert economic analysis to build on an already large public record. As we move forward, it is vitally important that the FCC provides a comprehensive analysis supporting any new regulatory framework that also responds to the economic and legal issues raised in our record.

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 or 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 FCC's March 31, 2016 Notice of Proposed Rulemaking asked over 500 questions in order to identify a path forward to establish consumer privacy protections for broadband Internet access services. In response to this rulemaking, we have a voluminous record. The FCC is combing through the comments that have been submitted and working to develop a way forward. As we do so, I believe we should be mindful of the benefits of harmonizing our policies—to the extent reasonable under existing law—with other federal authorities. As you suggest, we also should consider the consequences that any potential FCC action may have with respect to existing protections for voice telephony.

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?

As we proceed with our review of business data services, the FCC will need to make sure that our policies work across the country. To do so, we will need to take into account many factors, including how we can best encourage deployment of broadband infrastructure in rural areas.

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?

As we proceed with our review of business data services, one of the principles that should guide us is that infrastructure matters—and encouraging its deployment is essential. That means any policies we adopt should include incentives for providers to build and invest in networks. If they do not, our policies could yield unintended consequences, particularly in rural areas.