

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
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August 25, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Chairman Wheeler:

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.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests 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

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Greg Walden

1. In the Video Navigation Choices proceeding, one of the Dissenting Statements said: "... nothing in this proposal would prevent a set-top box manufacturer from replacing the commercials in a television show with commercials sold by that manufacturer." At your press conference after the adoption of the NPRM, you were asked about this *advertising* issue by one of the reporters. You indicated in response, using the phrase "*sanctity of content*" several times, that the final rule would specifically prohibit this type of advertising.
 - a. The NPRM does not use the phrase "*sanctity of content.*" Could you point out the paragraph in the NPRM or anything in the proposed rule that discusses this "*sanctity of content*" because paragraph 80 of the NPRM seems to provide otherwise and specified that: "*We do not currently have evidence that regulations are needed to address concerns raised by MVPDs and content providers that competitive navigation solutions will disrupt elements of service presentation (such as agreed-upon channel lineups and neighborhoods), replace or alter advertising or improperly manipulate content.*"?
2. Part of your justification for closing FCC Field Offices was that their functions could be replaced by Tiger Teams that could be dispatched anywhere anytime. Have you established these teams - are they all up and running and fully staffed? If not explain why.
3. The FCC has found on three previous occasions that an absolute ban on newspaper/broadcast cross-ownership is not necessary to serve the public interest. Even in your own tentative conclusions in the 2014 proposal, you recommended that the ban be relaxed and that the radio / newspaper ban should be repealed. However, it appears that the item adopted by the majority essentially keeps the ban in place and backtracks from your own earlier findings. While recognizing that the incentive auctions will disrupt the landscape, the Congressional directive and statute says you must review the rules and determine if they are in the public interest — not whether you should check back later when it might be too late for this industry. Newspapers and broadcasters need scale to compete against web content. Please explain the departure from your earlier conclusions.
4. Section 11 of the Communications Act requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year – a biennial review -- to determine whether the regulations are no longer in the public interest due to competition between providers of the service and whether such regulations should be repealed or modified. I believe the FCC issued the 2012 Review in 2013.
 - a. Has the FCC produced the 2014 review? If not explain why?
 - b. Is it underway? When do you expect it will be completed?

- c. Now that you consider broadband service a telecommunications service does that mean the recently adopted net neutrality rules will be scrutinized?

The Honorable Marsha Blackburn

1. In your testimony at a March 15, 2016, hearing before the House Appropriations Committee's Subcommittee on Financial Services and General Government, at least one subcommittee committee member noted that stakeholder constituents have expressed copyright related concerns related to the Commission's notice of proposed rulemaking (NPRM) in the set-top-box proceeding, In the Matter of Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices, and asked if the Commission was working with the U.S. Copyright Office to make sure the Office's views were addressed. You indicated that the Commission would work with the U.S. Copyright Office. With that in mind, please respond to the following:
 - a. Have you or any Commission staff consulted with personnel from the U.S. Copyright Office, including but not limited to the Register of Copyrights and Director of the U.S. Copyright Office, regarding the Copyright Office's views regarding the set-top-box NPRM? If so, please describe the nature of the Commission's consultations with the Copyright Office, including a detailed description of meetings, phone conversations, or electronic communication between Commission staff and the Copyright Office.
 - b. Did personnel from the Copyright Office express concerns regarding the set-top-box proposal NPRM, including concerns related to compulsory licenses (as that term is defined under the Copyright Act, or more commonly known as a statutory authorization for third parties to use intellectual property, without the permission of the rights holder)? Please explain the nature of those concerns in detail, including any concerns that the NPRM might effectively establish a compulsory license - which the DCC does not have authority to establish?

The Honorable Bob Latta

1. The FCC's original proposal attempts to mandate openness of video information for consumer navigation devices that shifts customization and uniqueness of the customer experience from the cable provider to the device manufacturer. Lacking the scale and market power of the largest providers, smaller, regional terrestrial competitors often have significantly higher costs for critical inputs (*e.g.*, programming). Therefore, these smaller competitive providers must heavily rely on their ability to provide a unique customer experience to differentiate their services from much larger providers.

Perhaps more important than the fact that these smaller competitors provide consumers an alternative for video, data and phone, such providers offer the second pipe into the home – a long standing federal objective – and something that is critically important to all video providers – traditional and newer entrants, such as Hulu, Apple TV and the like. Ultimately, the second broadband pipe into the home is what will give consumers freedom.

While an alternative proposal championed by the National Cable & Telecommunications Association contemplates an exemption for all providers with less than one million subscribers, absent such exemption, smaller, regional competitive terrestrial providers and the competition that they provide consumers may face severe and, perhaps, unintended consequences.

Specifically, I have two questions:

- a. Would you support exemption of smaller, regional terrestrial competitors?
 - i. If you support such an exemption, are there any parameters to the exemption that you would consider appropriate? If so, please provide them with as much detail as possible.
 - ii. If not, please explain with specificity how the grant of an exemption would prevent the goals set forth in the NPRM from being accomplished?
 - b. If you do not support a proposed exemption for smaller, regional terrestrial competitors, are there any other measures that you would find appropriate to protect local terrestrial competition? If so, please provide detail as to what types of measures you would support.
2. You have previously testified that a consumer will have the same level of privacy expectations under the “information flow” proposal in the set-top box NPRM as under Section 631. But privacy advocates, NTIA and many Members have all concluded that the NPRM proposal does not provide consumers the same Title VI privacy rights and remedies on third-party devices as they receive from cable operators, and you now agree that the NPRM proposal is flawed.
- a. Given that protecting consumer privacy is essential, do you commit not to vote for any set-top box proposal that does not provide consumers with the same Title VI privacy rights and remedies on third-party devices as they receive from cable operators?
 - b. The HTML5 apps-based approach to provide full Title VI consumer privacy and still promote retail competition, while the “information flow” proposal in the set-top box NPRM leaves a gap in privacy protection that no one has been able to bridge. Isn’t it time to set aside the approach proposed in the NPRM and follow the HTML5 apps-based proposal as the basis for resolving the set-top box docket?
3. In your testimony, you claimed that the HTML5 apps-based approach offered by independent programmers and MVPDs required a new gateway device. You also claimed it was “not a proposal, it’s a press release.”
- a. Isn’t it correct that proponents of the apps-based approach provided extensive details about the proposal and how it worked to your personal staff, Office of General Counsel, Media Bureau, and Chief Technologist over at least half a dozen meetings, up to and including the day before your testimony?

- b. Isn't it correct that there is nothing in the announcement of the HTML5 apps-based proposal suggesting the need for a new gateway device, and it in fact proposes to make apps available that can run without a cable set-top box?
- c. What exactly is the basis for your testimony that the HTML5 apps-based proposal, on which you say you had nothing more than a press release, requires a new gateway device?
- d. Isn't it correct that your staff was informed in repeated meetings that the HTML5 apps-based approach could run over the same cable modem that provides Netflix and other online video to retail devices, and that the modem could be purchased at retail?

The Honorable Leonard Lance

1. You have testified multiple times about your efforts to address the agency's backlog. I understand that WJLP has three applications for Commission review of media Bureau orders pending – two of these requests were filed in 2014. Please provide a status update on the following proceedings:
 - a. Application for Review filed August 25, 2014 (challenging the Media Bureau's indefinite deferral of the obligation of the major cable systems in the NJ-NY DMA to carry the WJLP signal. (No Docket or File Number but associated with Station WJLP Request for Cable Carriage)
 - b. Application for Review filed Nov. 10, 2014 (challenging the Bureau's order that WJLP must stop broadcasting unless it goes to virtual Channel 33) MM Docket No. 14-150
 - c. Application for Review filed July 6, 2015 (challenging Bureau's final assignment of virtual channel 33 to WJLP) MM Docket No. 14-150

The Honorable Pete Olson

1. I take note of the fact that the NPRM did not take any notice of the extensive study entitled "Online Privacy and ISPs" that was submitted by former Obama White House Staff member, Professor Peter Swire. Swire's report concluded that ISP access to user data is not comprehensive and that ISP access to user data is not unique with edge providers being the entities that have the comprehensive and unique access.
 - a. Did the FCC review the Swire study? It was filed as a comment in the privacy docket.
2. Given the factual nature of the paper written by a respected expert in the field of privacy, why did the FCC fail to reference the paper in its NPRM?

3. Assuming Professor Swire's study is correct, what do you see as the consumer harm caused by a consistent regime based on the sensitivity of the data and not the entity collecting and/or using it?
4. Is there any concern that consumers might be misled by the proposed rules? Are you at all concerned that consumers may be led to believe these new rules give them protections that really don't exist because the rules don't apply to the edge providers? Would this result in consumer confusion concerning when and how their information is protected when using the Internet?
5. As you know, this Committee has received information about the potential use of unlicensed technology that carriers want to introduce – LTE-U – along with information about the potential impact the technology would have on unlicensed devices, such as Wi-Fi access points. You have publicly stated that LTE-U cannot be introduced unless its proponents reach agreement with others using the band today. Based on that position, the Commission has refused to approve equipment that would use LTE-U technology. While we're pleased that industry appears to be cooperating, the process seems to be taking a long time, with September being the latest estimate of when a test plan will be complete. How long does the Commission plan to wait for this process to be complete? Isn't there anything the Commission can do to speed things along? Consumers are being denied the benefit of this technology, equipment vendors are anxious to produce it and providers are ready to use it.
6. I am concerned about the process the Commission has undertaken with respect to the potential approval of LTE-U devices. No one wants the Commission to introduce devices that will interrupt consumers' use of Wi-Fi and other technologies. But isn't the spectrum on which Wi-Fi operates, and on which LTE-U would operate, specifically intended for "permissionless innovation?" I understand the LTE-U devices meet the technical requirements of the rules for unlicensed systems. Isn't requiring the extra level of testing now underway contrary to the very premise of the rules governing unlicensed devices? Why are LTE-U proponents being singled out for this treatment? Were the technologies that are already in those bands required to go through this same process?
7. 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?
8. 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?

The Honorable Mike Pompeo

1. Chairman Wheeler, two years ago you stated that in addressing risks to network security, the Commission cannot “hope to keep up if we adopt a prescriptive regulatory approach” and the FCC should rely “on industry and the market first” to develop business-driven solutions to security issues.

In November 2014, you stated that you “do not believe that a compliance checklist is the right answer for cyber risk management. Rather, I want companies to develop a dynamic strategy that can be both more effective and more adaptive than a traditional prescriptive regulatory approach.” You also said, that “If critically-positioned companies just comply reactively with a regime of prescribed mandatory requirements then our networks will always be a step behind” and that cyber “threats move faster than a notice-and-comment rulemaking process.”

And separately, you’ve circulated to your fellow Commissioners an FCC Policy Statement on Cybersecurity that would focus on voluntary industry participation and the avoidance of prescriptive cybersecurity rules.

But your broadband privacy NPRM proposes a very different approach – a strict liability data security regime that the FTC comments indicate is the wrong approach, along with five specific data security regulatory mandates – while asking questions about whether to adopt a host of other onerous, inflexible data security regulations. Commissioner O’Rielly, for example, has said he “was surprised that [the NPRM] would contradict the other cybersecurity item already on circulation [at the FCC].”

So you seem to have completely abandoned your previously-stated views that prescriptive regulatory mandates are a counter-productive means of ensuring network and data security.

- a. What has changed in two years to warrant this complete about-face?
2. Chairman Wheeler, the NIST Cybersecurity Framework, which was created by a various industries and experts (and supported by both Republicans and Democrats alike, including the Obama Administration), focused on “a prioritized, flexible, repeatable, performance-based, and cost-effective approach” to manage cyber risk. But the FCC’s NPRM proposals offer a prescriptive and inflexible set of security requirements that bear no relation to actual risks. As noted by former FTC Chairman Jon Leibowitz, the “prescriptive and static nature” of the FCC’s proposed security requirements is “at direct odds with the [NIST] Cybersecurity Framework.”

- a. Why are you proposing cybersecurity rules that radically depart from the clear and successful policy reflected in the NIST Framework?
3. Chairman Wheeler, the Cybersecurity Information Sharing Act of 2015 recognize that entities must be able to share information related to cybersecurity risks and incidents and collaborate to respond in as close to real time as possible to address cyber threats. The Cybersecurity Information Sharing Act provides liability protection for sharing cyberthreat information, unless the entity “knowingly” shares information, such as personally identifiable information, that’s not supposed to be shared. The FCC’s proposals would frustrate this critical policy objective by making it harder for ISPs to share cyber threat information with other parties because they would be subject to FCC enforcement at a much lower standard.
 - a. Why are you proposing in the broadband privacy NPRM cybersecurity rules that radically depart from what is provided in the Cybersecurity Information Sharing Act of 2015?
4. Moreover, a group of experts in the field succinctly express the trade-off the Commission may be forcing: “Depriving researchers of this data, in favor of a ‘consent to protect’ interpretation of the Notice, will destroy the science of cyber public health in its early days.”
 - a. Why are you proposing rules that would frustrate cyber security research?
5. Chairman Wheeler, earlier this year President Obama established a non-partisan Commission on Enhancing National Cybersecurity that consists of leading experts from business, technology and academia. The members of the Commission were appointed in April, and they are tasked with making detailed recommendations to strengthen cybersecurity in the public and private sector the end of this year. At the same time in which this non-partisan Cyber Commission was formed, you released proposed rules divided along partisan lines that mandated a prescriptive regulatory approach for securing ISP networks.
 - a. Why would you move forward with adopting highly partisan and highly prescriptive rules for securing ISP networks before the President’s Cyber Commission has even offered its recommendations?
6. 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?
7. 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 Bill Johnson

1. At the hearing, I asked several questions about how the FCC has responded to audit findings of the Inspector General. The FCC used to report publicly on its progress fixing problems identified by the Inspector General and other auditors, like the Government Accountability Office (GAO). Unfortunately, the FCC cut these public disclosures. Please provide the number of recommendations from the Inspector General, the IG’s outside auditors, and the GAO, and describe what the FCC is doing to address these recommendations. In addition, please provide a list of every open audit recommendation and the FCC’s anticipated date for fixing the problem.
2. You recently submitted the FCC’s Management Report on Inspector General and Other Audit Reports to the Committee. The report discloses that in March of last year the IG issued a report on the FCC’s management of civil monetary penalties. I think the IG testified back in 2014 that he was going to do this and that the report found that the FCC had not collected all of the penalties and fines it could have. Is it correct that of the IG’s 13 recommendations, 10 remain open? When do you expect the remaining recommendations to be closed out?
3. At the hearing, I asked several questions about how the FCC has responded to audit findings of the Inspector General. The FCC stopped reporting publicly on its progress fixing problems identified by the Inspector General, the Government Accountability Office (GAO), and others in 2009. As a result, the public has no idea if the FCC is taking timely action to address problems found by its Inspector General and others. Some information is available separately from the GAO, which reports that the FCC has failed to address more than 50 GAO audit recommendations. For example, the GAO reports that the FCC has failed to implement corrective action for six of the seven GAO audit recommendations arising from a report criticizing the FCC for wasting \$10 million on information technology (IT) security enhancements. See INFORMATION SECURITY: FEDERAL COMMUNICATIONS COMMISSION NEEDS TO STRENGTHEN CONTROLS OVER ENHANCED SECURED NETWORK PROJECT (Feb. 1, 2013). With this background in mind, please respond to the following questions and requests for information:

- a. Please provide a list of each open audit finding or recommendation from the Inspector General, the GAO, or any other auditor, as well as the date of each finding/recommendation, the FCC's planned corrective action, the FCC senior executive tasked with leading the FCC's response, and the FCC's internal deadline for implementing the fix.
 - b. For every open audit finding/recommendation from the FCC IG, the GAO, or any other auditor, please explain why the FCC has not implemented corrective action and what you will do to ensure the FCC takes corrective action within the next sixty days.
 - c. Please explain whether you are committed to addressing the problems identified by the IG, the GAO, and others, and if so, what you are doing to ensure these past audit findings and recommendations are addressed.
 - d. Please explain what steps you will take to increase transparency over the FCC's process of addressing recommendations of the Inspector General, the GAO, and other auditors.
4. On June 16, 2016, you responded to questions for the record that I submitted after the March 2016 hearing. Unfortunately, some of your responses were incomplete. For example, you reported on the FCC's spending on travel for FY 2011 through FY 2016, but you did not include the FCC's travel spending using auctions money or the overall total. Please provide corrected travel spending figures that shows the total FCC spending on travel by source of funding. In addition, for FY 2011 through FY 2016, please provide the total number of trips FCC personnel took for each fiscal year.
 5. In your June 16, 2016 response on FCC travel spending, you stated that "[t]here is no rapid rate of growth, only an aberration in spending levels due to [sequestration]." However, a review of the FCC's travel spending suggests that this conclusion — which was based on incomplete information — may be incorrect. A quick review of FCC travel spending shows that your planned FY 2016 travel spending is 22% higher than the FY 2012 spending level and may be *the most the FCC has ever spent on travel*. It appears that the FCC plans to spend more on travel than it did during the DTV Transition. Please detail the FCC's travel plans for FY 2016 and FY 2017, including who will travel, where these officials will travel, and the purpose of the travel.
 6. In your June 16, 2016 response, you provided spending details for travel for the offices of the FCC Chairman and Commissioners. A review of the FCC's budget documents for FY 2017 shows that you plan to increase travel spending this year (FY 2016) for your office and those of the other commissioners by approximately \$110,000 to \$320,291. This is roughly 54% over the \$207,960 you reported spending on travel for these offices in FY 2015. Please explain why your office and those of the other FCC commissioners require so much additional travel funding for this year. Please provide the planned trips these offices will take during FY 2016 and the purpose of these trips.
 7. Please explain how the FCC's travel spending is consistent with President Obama's *Executive Order 13589 Promoting Efficient Spending*. Please identify the senior official tasked with developing efficient spending plans on travel, pursuant to Section 3 of

Executive Order 13589. Please provide copies of all recommendations, policies, and directives this FCC senior official has developed to “reduce costs” and ensure efficient spending on travel.

8. According to the General Services Administration (GSA), the FCC did not submit its report for Premium Class Travel to the GSA for FY 2015. Please provide the total number of premium class trips that FCC officials took during FY 2013, FY 2014, FY 2015, and in FY 2016, and please describe the destination and purpose of each trip. In addition, please explain what the FCC will do to ensure that it submits Premium Class Travel reports to the GSA in the future.
9. In your June 16, 2016, response to my questions from March, you provided a summary explanation for how the auctions program accounts for \$59 million in auctions funding to the Office of Managing Director, but you did not provide the requested detail that conforms with the crosswalk for the Spectrum Auctions Program. Please detail for the Subcommittee how the auctions program would account for such a large portion of OMD’s cost in FY 2017.
10. In your June 16, 2016, response to my questions from March about the FCC’s auctions expense report, you provided a high-level summary of the statutory reporting requirements, but you did not provide copies of past reports. Please provide for the record copies of the FCC’s auctions expense reports for 2013, 2014, and 2015.
11. You testified that you had no idea if the fine that the Commission assessed against an offshore manufacturer of jamming equipment would ever be responded to, let alone paid.
 - a. Under the “information flow” proposal in the set-top box NPRM, third party device makers would have access to information protected under Section 631. Even NTIA agrees that the NPRM’s proposal to rely on self-certification of privacy does not provide an adequate level of protection for consumers or answer critical questions, such as who will ensure compliance and how will consumers be assured that they will retain their existing consumer remedies for infringements of privacy.
 - b. Given your uncertainty about whether the FCC has effective enforcement power over offshore manufacturers, isn’t it also true that the NPRM provides no assurance of enforceable protections for private information put into the hands of third party device manufacturers, leaving consumers without any meaningful remedy?
 - c. Under the “information flow” proposal in the set-top box NPRM, how would the FCC (or FTC) determine what data a third party is collecting, how it is using the data, or whether it is unlawfully sharing it with other parties?
 - d. The HTML5 apps-based approach offered by independent programmers and MVPDs would provide full Title VI consumer privacy and still promote retail competition. Isn’t it is time to set aside the approach proposed in the NPRM and follow the HTML5 apps-based proposal as the basis for resolving the set-top box docket?

12. You told us in April of last year that the FCC was “moving ahead without legislation” to create a better, more transparent, more effective FCC, and that you believed the Commission should be given the chance to “continue to do its job, including the job of bettering how it conducts the business of the people.” You committed to setting up a task force with one representative from each Commissioner’s office. It’s been over a year since this commitment was made – what results can you report? Are you taking these efforts seriously? I’m inclined to believe that the Commission has been given a chance to do its job, and it has not lived up to that promise.
13. The FCC has lowered its total number of employees, but the FCC’s budget reports show perpetually increasing personnel expenses. ***Part of the reason appears to be high FCC salaries.*** According to the Office of Personnel Management (OPM), ***a record high number of FCC employees receive salaries of more than \$160,000/year.*** As of March 2016, over 33% of FCC employees receive salaries at this high level. This appears to be a significant increase from just last year, when only 3.1% of FCC employees received annual salaries in excess of \$160,000/year. OPM also reports that nearly 80% of FCC employees receive salaries of \$100,000/year or greater. Please explain why FCC employees require such high salaries. Please explain what controls the FCC has implemented during your chairmanship to ensure that it does not inflate the grades of FCC personnel.
14. According to the Internal Revenue Service, 65 FCC employees owed more than \$3 million in back taxes as of 2014, which is the most recent reporting year. Although your predecessor Chairman Genachowski promised to fix this problem of FCC employees failing to pay their taxes, he did not and ***the FCC tax deadbeat problem has grown – almost tripling since 2012.*** Please provide updated numbers (*i.e.*, FCC employees and amount of back taxes owed) for 2015 and for 2016 to date. In addition, please explain why the FCC tax deadbeat problem grew worse after you assumed the chairmanship in 2014. Please explain what disciplinary action the FCC has taken against FCC employees who have failed to pay their taxes. Please explain what the FCC is going to do to address this issue and ensure its employees pay their taxes.
15. The FCC Inspector General continues to report to Congress on the misconduct of FCC employees. In his most recent report, the FCC IG found “employee violations of multiple ethical and administrative rules” arising from inappropriate use of computers, such as viewing pornography, operating an outside business, and other types of fraud. The IG reports that it referred criminal action to the Internal Revenue Service (IRS), but the IRS declined to proceed. Please explain whether the FCC took disciplinary action against these employees and, if any of these employees are still working at the FCC, please explain why. Please explain whether the employees the IG found engaging in misconduct were repeat offenders in any way. Please explain whether the FCC IG made any criminal or civil referrals to the Department of Justice (DOJ) for these matters, and if so, explain whether DOJ is pursuing action.
16. Numerous FCC IG reports have identified misconduct of FCC employees. Please explain whether any FCC employees found by the IG to have engaged in misconduct received salaries of more than \$150,000. Please provide a chart detailing the salary levels of the employees the IG found to engage in misconduct, including time and attendance fraud, operating outside business during official hours, viewing pornography, and other such

misconduct described by the IG in his semi-annual reports. Please explain whether any of these employees received any pay raise or salary increase after the IG uncovered their misconduct. If any of these employees continue to work at the FCC, please explain why.

17. Please explain what the FCC has done to deter and prevent employee misconduct since you've assumed the chairmanship. Please provide copies of all directives, memoranda, instructions, or other guidance that your office has issued to ensure that the American public can have confidence in the workforce of the FCC. Please explain the reasons for any breakdown of an FCC policy, directive, or memoranda that resulted in employee misconduct found by the IG.
18. In my QFRs following the March 22, 2016, Oversight Hearing I requested certain information related to the Chief of the Enforcement Bureau's trip to the Super Bowl. I have been informed that while the FCC has produced the expense report related to the trip, the Bureau Chief's time and attendance report for the pay period during which the trip occurred has not been produced. Explain why the report has not been produced. Provide a copy of the report.
19. I understand that the FCC released several important peer reviews in the Business Data Services proceeding on June 28th – the same day that comments were due in the docket. I've heard that these peer reviews raise questions about the work that an outside economist hired by the FCC did, and that the FCC's outside economist revised his initial work based on the peer reviews.
 - a. The FCC received these peer reviews in April, but didn't release them until the end of June. Why the delay?
 - b. Why did the FCC choose not to release the peer reviews when it released the Further Notice on May 2nd? The peer reviews were submitted in April, so the FCC could have released them, but chose not to. Can you explain why the FCC didn't release the peer reviews with the Further Notice?
20. The FCC entered into a no-bid contract with an economist for about \$150,000. The only FCC explanation for this noncompetitive contract is that there is "only one source." To help us review the propriety of the FCC's actions, please respond to the following questions and requests for information:
 - a. Please explain how the FCC chose Mr. Rysman as an outside expert suitable for writing a study on the market for special access services (also referred to as "business data services").
 - b. What papers or studies has Mr. Rysman conducted into Business Data Services/special access services? What qualifications did Mr. Rysman have to conduct this study under a sole source contract?
 - c. What review did the FCC conduct to determine Mr. Rysman had no conflicts of interest concerning his study into the market for Business Data Services/special access service?

- d. Please provide the contract between the FCC and its outside economist, Mr. Rysman.
- e. Please provide the “justification and approval” used to justify the sole source non-competitive contract that the FCC entered into with Mr. Rysman.
- f. Please provide any other contracts that the FCC has entered into with outside economists since FY 2014, including any non-competitive contracts and the “justification and approval” for using a non-competitive contract in these cases.

The Honorable Billy Long

1. Chairman Wheeler, healthcare represents roughly one quarter of our nation's economy but is unique in a number of ways due to its bifurcated regulation and reimbursement and its personal impact on consumers. Given those facts, how is the FCC gathering information from the impacted healthcare patients and providers to inform its regulatory processes? Further, how concerned are you that rigorous regulation of such specific tools like auto-dialing will inhibit the ability of healthcare providers to reach out to their patients, assist patients in accessing care and improve patient adherence to care plans - and in a less intrusive manner that most patients prefer?
2. Chairman Wheeler, healthcare providers are responsible for providing quality care to their patients without final payment for these services until long after the patient has been discharged. With high deductible plans, and out-of-network penalties, pre-service and post-service collections are vital for providers. Calls related to the healthcare accounts for billing, insurance information, and collections should be included in the healthcare exemptions. These are not telemarketing, advertising or solicitation calls. On what basis does the FCC distinguish calls made concerning payment for services rendered from calls made concerning the provision of the services?
3. Chairman Wheeler, the cell phone number reassignment one call exception rule is very narrow and in effect prevents health care providers from using autodialing in the context of health care communications. What can be done to reduce the TCPA compliance risk when a patient gives his cell phone number to a hospital who then wishes to autodial the patient regarding a healthcare communication? Why are prior business relationships no longer an adequate representation of the consumer's consent?
4. Chairman Wheeler, in the July 5, 2016 declaratory ruling, the FCC states that the TCPA does not apply to the federal government or contractors authorized to call on behalf of the government. How will you take this ruling and apply it to those who are government debt collectors? Will there be restrictions or will they fall under the government contractor provision?
5. Chairman Wheeler, the July 5, 2016 declaratory ruling appears to help RTI, a nonprofit organization that conducts research and whose largest client is the federal government. What differentiates RTI from Gallup or other research polling firms?

6. Chairman Wheeler, in the declaratory ruling, the commission felt it was necessary to emphasize that the Declaratory Ruling focuses only on calls placed by the federal government or its agents, and does not address calls placed by state or local governments or their agents. Why did the commission feel it necessary to split the two? Why are state and local governments not allowed to be under the federal government provision?
7. Chairman Wheeler, the commission believes that allowing the federal government to use auto dialers without consent will foster public safety. How would the commission rule on a situation where a local school district sent out an unsolicited text about a lock down at a local school? Would this fall under the term of “public safety?”
8. Chairman Wheeler, on July 18, 2015, the commission adopted a new TCPA Order that many, who are governed by the law, believe will increase the potential for liability. For example, the reassigned phone number issue does not allow a company to rely on the owner’s prior consent to avoid TCPA liability. Companies will now need to develop procedures to avoid strict liability for contacting reassigned numbers. Can you explain the rationale behind this and why the commission believes that it is the responsibility for companies to use a private commercial database, one that is only accurate 80% of the time, to track reassigned numbers? Do you believe that this additional regulatory burden should be shouldered by companies?
9. Chairman Wheeler, is the commission worried about all of the Automated Telephone Dialing System (ATDS) cases being decided in court on a case-by-case basis? Should the commission revisit the definition and help to bring clarity to the issue, so that businesses can have clearer guidance?
10. Chairman Wheeler, is the commission concerned about how some of the most recent TCPA cases have dealt with the involvement of human intervention? Since the commission refused to establish a bright line rule, determination is now based on a case-by-case basis. What if anything will the commission do to help clarify and rectify this “oversight”?
11. 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 Renee Ellmers

1. On May 27, 2016, the staff of the FTC’s Bureau of Consumer Protection filed comments in the FCC’s BIAS privacy docket. Do you disagree with the FTC staff’s comments that imposing a number of specific requirements on the provision of BIAS services that do not apply to other services that collect and use significant amounts of consumer data is “not optimal”? Do you disagree with the FTC staff’s recommendation that the FCC should modify its proposed rules to reflect the “different expectations and concerns that consumers have for sensitive and non-sensitive data”?

The Honorable Kevin Cramer

1. Chairman Wheeler, on June 6, the Small Business Administration (“SBA”) submitted a letter to the FCC on the set top box proceeding.¹ The SBA filed a similar letter on June 27, raising concerns about the FCC’s broadband privacy proposal.² Both letters stressed the “significantly disproportionate economic impacts” that each proposal would have on small providers, and criticized the FCC because it had “not adequately attempted to quantify or describe the economic impact of the proposed rules on small entities.”

The Regulatory Flexibility Act requires the FCC to include with its proposal an Initial Regulatory Flexibility Analysis that quantifies or described the impact that its proposed regulations would have on small entities, but the SBA seems to suggest that the analysis in these proposals did not adequately address this issue.

- a. What was the specific process employed for reviewing these proposals before their adoption in order to ensure that you were complying with the RFA? For example, is there a dedicated team that is responsible for this analysis? How many individuals were involved, how many hours did they spend, and at what point in the process were these individual’s recommendations considered? Were all of the recommendations incorporated, if not, why not?
2. Chairman Wheeler, regarding the recently adopted USF reform order for small, rate-of-return carriers, you’ve already committed to work with Congress and affected stakeholders to promptly address any adverse or unintended consequences that arise out of the reforms. We want to talk about one issue that’s coming to light as implementation is underway – that is, we understand that even with the new standalone broadband mechanism, most small carriers still will be forced to offer broadband-only service at rates far in excess of what’s available in urban areas. This runs directly counter to the Communications Act’s promise of reasonably comparable services and rates. How do you plan to make sure ultimately that rural consumers are paying reasonably comparable rates to urban consumers regardless of whether its voice or broadband they want?
3. Chairman Wheeler, according to a recent study conducted by the National Exchange Carrier Association, 56 percent of ILECs operating in 42 states have reported complaints from consumers about dropped calls. Given your focus on this issue in recent years, what else can the FCC do to address call completion issues that continue to plague rural areas?
4. Chairman Wheeler, Section 214(e) the 1996 Act, Congress established the existing federal-state partnership and gave to State commissions the specific duty of designating ETCs to participate in the Lifeline program. The FCC was only authorized to designate carriers when a state was unable to do so. Explain how your order preempting the State designation role does not violate this specific statutory requirement?

¹ Letter from Darryl L. DePriest, Chief Counsel for Advocacy, and Jamie Belcore Saloom, Assistant Chief Counsel, Small Business Administration, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 16-42 (filed Jun. 6, 2016), *available at* <https://ecfsapi.fcc.gov/file/60002096035.pdf>.

² Letter from Darryl L. DePriest, Chief Counsel for Advocacy, and Jamie Belcore Saloom, Assistant Chief Counsel, Small Business Administration, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106 (filed Jun. 27, 2016), *available at* <https://ecfsapi.fcc.gov/file/10627279025111/FINAL-BIAS%20Privacy-Advocacy%20Reply%20Comments-%20May%202016.pdf>.

5. Chairman Wheeler, in its decision making to create a national verifier did the FCC consult with database experts during its deliberations?
 - a. If the FCC did not consult database experts, why not and what makes them think a national database is achievable now when it wasn't before?
 - b. If you did consult database experts, who were these experts and what were their recommendations?
 - c. How much were these experts paid?
 - d. Were the recommendations of these database experts made public and comment sought on their recommendations?
 - e. Were estimates on the cost of creating the national verifier made and if so what is the estimated cost?
 - f. If USAC will be charged with creation and operation of the database, has the agency evaluated whether USAC currently has the expertise and/or resources to create such a database?
 - g. If not, what will be the cost to the program for USAC to obtain such expertise?
 - h. What alternatives to the "national verifier" plan were considered and what was the difference in costs to the program?
 - i. According to GAO, the data needed to verify eligibility primarily resides at the State level. Already about 30 States utilize their social services databases to verify consumer eligibility. If over half the States were already using databases why create a national verifier instead of solely using State databases?

The Honorable Anna G. Eshoo

1. In the *Spectrum Frontiers Order* the FCC declined to adopt an in-band aggregation limit for the proposed 5G bands and found that any differences in characteristics that exist across these bands are purely technical. If it becomes clear as 5G continues to develop that the different characteristics across these bands will make a meaningful difference in how these bands can be used, will the FCC reconsider whether to adopt an in-band limit?

The Honorable John Yarmuth

1. I understand that public television along with the other broadcasters and Consumer Technology Association filed a petition at the FCC seeking approval to offer Next Generation TV. This innovative and optional standard promises to bring many new resources to the American public, from ultra-high definition TV, better in-building saturation, several more streams of programming per station, expanded datacasting

capabilities that can help address the growing need for unlimited data delivery and exciting new public safety applications. As a champion of the Ready to Learn program, I am particularly excited about the opportunity for this new standard to help stations potentially offer enhanced interactive children's programming.

- a. Mr. Chairman, I hope that the FCC can move this proceeding along this fall to the NPRM stage. Can you please provide a status update?

The Honorable Yvette Clarke

1. Chairman Wheeler, it appears that some progress is being made on the set top box issue and I applaud your efforts to solicit and consider the alternate proposal for industry. As you know, the GAO has approved my request for an "impact study" and I hope that the rulemaking will be done in a way that incorporates its findings. Clearly, my preference would be that no action is taken prior to the GAO study, following your advice to "trust and verify."
 - a. However, I would like to have your assurances that you will work with me to ensure the findings of the proposal's impact on multicultural media will be integrated into any final rulemaking?
2. On June 27, you circulated a Fact Sheet describing an item provided in response to the Third Circuit's remand in the wake of the *Prometheus* decision. Five minority ownership proposals suggested by MMTC were excluded, including the extension of the MVPD Procurement Rule to all communications platforms – a rule introduced and advanced by our colleague, Congressman Rush.
 - a. Would you be willing to commit to the extension of this rule across all platforms, recognizing industry convergences?
3. Mr. Chairman, you've noted that the media and telecom ecosystems are converging rapidly. Leading the way in this convergence is advertising, whose messages cut across media platforms from AM radio to wireless apps and everything in between. When the FCC banned discrimination in ad placement in 2008, the agency recognized how critical advertising is in facilitating the diversity of voices and ownership. Under current statutory authority, it appears that the Commission can ask the industries it regulates for information on their use of minority-owned advertising agencies, and their use of minority owned media for ad placement.
 - a. Would you be willing to make such an information request of both the agencies you regulate and edge providers to provide the results to the Members of this Subcommittee?
4. At last week's hearing, I inquired whether you would be willing to recommend the extension of the Cable Procurement Rule to all communications technologies. You responded by suggesting that "strict scrutiny" might apply. Your staff in a statement dated on July 13 found that this should not be the case. The statutory provision, dating from the 1992 Cable Act, is found at 47 U.S.C. §554(d)(2)(E). It provides that an MVPD

shall, to the extent possible, “encourage minority and female entrepreneurs to conduct business with all parts of its operation[.]” The implementing FCC rule, 47 C.F.R. §76.75(e), faithfully implements the statute by calling for “[r]ecruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests.” Until your testimony, no one has ever suggested that the Rule presents any constitutional question.

- a. Would you please confirm my understanding that a broad recruitment provision such as the Rule, without quotas or preferences, would be reviewable under the rational basis standard? Then could you please revisit my original question and advise on whether you would recommend extending the Rule to all communications technologies?
5. The upcoming incentive spectrum auction appears to have generated sizable return on the “reverse” side of the auction. However, I am remain concerned about the number of small, minority- and women-owned businesses that will be beneficiaries on the “forward” side of the incentive auction.
 - a. Given the nominal participation by small businesses and bidders of color in incentive auction, what is the Commission doing to leverage the secondary market to ensure opportunities for owners of color? And, what can the Commission do to: consider secondary market transactions as a factor in whether to give a carrier rule waivers relating to ownership, including the mergers and acquisitions (“M&As”) context, and possibly attendant to the IP Transition and, provide carriers that engage in secondary market transactions a bidding credit in wireless auctions, or an opportunity to pay for the spectrum in installments.
 - b. Are there also opportunities in other spectrum bands, such as D Block, that exist for small, minority- and women-owned businesses?
6. “Media and telecom ecosystems are converging rapidly. Leading the way in this convergence is advertising, whose messages cut across media platforms from AM radio to wireless apps and everything in between. When the FCC banned discrimination in ad placement in 2008, the agency recognized how critical advertising is in facilitating the diversity of voices and ownership. Under current statutory authority, it appears that the Commission can ask the industries it regulates for information on their use of minority-owned advertising agencies, and their use of minority owned media for ad placement.
 - a. Would the Commission be willing to make such an information request of both the agencies you regulate and edge providers to provide the results to the Members of this Subcommittee within ninety (90) days of today’s hearing?
7. Mr. Chairman, you testified to this Committee your willingness to work with the apps-based proposal, but it is not yet clear to me whether you have abandoned the idea that device manufacturers should be able to use or distribute minority and independent programming in ways that are contrary to their licensing arrangements with the MVPD. Minority and independent programmers depend upon the revenue from advertising and carriage agreements in order to thrive and create original programming. You have said

on many occasions that copyright protection is essential, and that the FCC is not proposing to give away any new or unpaid rights to distribute the video programming of television networks carried on cable and satellite. But you have also said that there are hundreds of other programmers that third party device manufacturers could combine with cable and satellite programming in a retail set-top box and present in their own guide. Programmers have made a compelling argument that they license what platforms they appear on and on what terms, and that the value of their content will decrease if third parties are allowed to repackage their networks into new devices, lineups and services on different terms without negotiating for rights.

- a. Is it your position that minority programmers like TV One, Vme TV, FUSE and REVOLT are not entitled to the same protections and control over their programming that you are willing to extend to television networks carried on cable and satellite?
- b. Is it your position that a third party device or app maker may combine MVPD programming with new online programming in a different guide, without negotiating for rights?
- c. Is it your position that a third party device or app maker may chose not to carry particular channels of MVPD programming and remove it from the device they sell?

The Honorable David Loeb sack

1. I commend the work that you have done on USF reform. The recent order makes a number of complicated changes, including new extensive models, to an already-complicated system. Carriers will be asked in the coming months if they want to elect the model on a voluntary basis, or continue to receive support through a modified version of the system that was in place before. Many of these changes are in early stages of implementation, or may not even have been started yet. Chairman Wheeler, how do you intend to ensure that carriers have complete information about both the model and the other changes to the current system before they need to make that choice between the different support options?
2. Regarding the petition filed by the Edison Electric Institute and the American Gas Association requesting expedited action by your agency on a utility specific exemption from parts of your TCPA regulations, have you met with representatives of the utility industry to hear their customers' view of the important text and phone calls they want to receive regarding outages, tree trimming and/or low balances? Do you have a timeline for responding to this petition, which I understand is over a year old?
3. Regarding business data services (BDS), for rural areas that require more broadband infrastructure investment, do you have any concerns that price regulation could prevent much needed deployment? What impact would price regulation have on rural economic development, jobs and anchor institutions if BDS providers can't make the investment? Do you think lower wholesale prices will drive ILECs and cable companies to build more fiber?

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 Diana DeGette

1. I understand the Business Data Services proceeding turns on the 2013 data that providers filed to indicate where competition is, and where it isn't – but that some providers filed supplemental 2013 data earlier this year. I hate the idea of knowingly proceeding with incorrect data ... Is there a way to run your economic study with the new data and still make your deadline?
2. During the hearing you testified that the Commission will retain enforcement authority under Section 631. As written, the Set-Top Box NPRM does not appear to be any role for Commission enforcement against third party device makers.
 - a. Can you provide further clarity as to how the Commission will enforce section 631 violations should the third party approach from your NPRM be adopted in a final rule?
 - b. How would Section 631 enforcement be addressed under the pay-tv industry proposal?

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?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Gus Bilirakis

1. I, along with many of my colleagues from both sides of the aisle, remain concerned about the impact of losing the fields' boot on the ground presence, especially with regard to resolving interference to public safety communications. You have consistently stated the FCC will continue to meet its speed of disposal metric for public safety interference - that the FCC will respond to 99 percent within one day - but that response is typically an email to the complaint.
 - a. However, you have since disclosed that it takes 28 days, I understand, on average to resolve the interference. Chairman Wheeler, has that data point changed since you closed the field offices? Please explain. Provide the data for each year prior to the adoption of your proposal to close the field offices beginning with 2009 and the months since the adoption of your proposal.

The Honorable Bill Johnson

1. One of the things that we focused on is the uncertainty that results from poor processes. On May 4, 2016, an opinion and order was released by the Enforcement Bureau in a complaint proceeding - Earthlink v. SBC. The complaint was filed with the FCC on May 13, 2004. It took the FCC almost 12 years to resolve the complaint. Explain the delay in addressing this complaint.
2. Chairman Wheeler, you recently submitted the FCC's management report on Inspector General and other audit reports to the committee. The report discloses that in March of last year the IG issued a report on the FCC's management of civil monetary penalties. I think the IG testified back in 2014 that he was going to do this and that the report found that the FCC had not collected all the penalties and fines that it could have.
 - a. You reported to this committee that of the IG's 13 recommendations, ten remain open. When will the remaining recommendations be closed out?
 - b. Provide a copy of the IG's audit report.