Federal Communications Commission
Office of Legislative Affairs
Washington, D.C.20554

Office of the Director

October 5, 2016

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on July 12, 2016 at the hearing entitled "Oversight of the Federal Communications Commission."

If you have further questions, please contact me at [redacted].

Sincerely,

[redacted]

Michael Dabbs
Director

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

Enclosures

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."?**

Response: One of our goals in this proceeding is to ensure and maintain strong protections for copyrighted content and maintain contracts and agreements currently in place between MVPDs and programmers. The NPRM asked questions seeking input on a number of methods to accomplish this while recognizing, as you note, that there is no evidence under the CableCard regime that competitive navigation solutions had been disrupting elements of service presentation, replacing or altering advertising, or improperly manipulating content.

For instance, in paragraph 17 of the NPRM, we stated: "In addition, our goal is to preserve the contractual arrangements between programmers and MVPDs, while creating additional opportunities for programmers, who may not have an arrangement with an MVPD, to reach consumers." And in paragraph 71 the item states: "…our regulations must ensure that Navigation Devices (1) have content protection that protects content from theft, piracy, and hacking, (2) cannot technically disrupt, impede or impair the delivery of services to an MVPD subscriber, both of which we consider to be under the umbrella of robustness (i.e., that they will adhere to robustness rules), and (3) honors the limits on the rights (including copy control limits) the subscriber has to use Navigable Services communicated in the Entitlement Information Flow (i.e., that they adhere to compliance rules)." The language is nearly identical to the current license that CableCard devices, such as TiVo, must agree to before being certified by CableLabs. Therefore, we sought comment on whether these provisions are sufficient or whether the Commission needed to take additional action to protect content.

Consistent with this intent, the Order on circulation would employ an apps-based approach that ensures that MVPDs continue to oversee the delivery of content from end-to-end. This approach ensures copyright protections, licensing agreements and contracts between MVPDs and programmers remain firmly intact.

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.**

Response: Following the Commission's adoption of the Field Modernization Order in 2015, the agency was required to negotiate the impact and implementation of that order with the union, pursuant to the collective bargaining agreement between the FCC and its employees' union (NTEU). Last month, the Commission and NTEU reached an agreement establishing procedures for implementing the reductions in force required under the Field Modernization Order. Among other things, the agreement sets timelines and procedural requirements for reassigning personnel in field offices designated for closure to offices remaining open under the Field Modernization Order, including the Tiger Team offices. The Commission presently anticipates completion of this process in early 2017. The Tiger Teams should be up and running at that time.

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 *I* 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.**

Response: The Commission retained the current media ownership rules with slight modifications based on its finding that they remain in the public interest. The Commission has an obligation to review its ownership rules and a court mandate to proceed expeditiously. Given the fact that the incentive auction is currently ongoing and the impact of the auction on the marketplace may not be known for some time, it is appropriate and necessary for the Commission to have proceeded with its consideration of the present quadrennial review. Ultimately, the rules adopted in the 2014 proceeding were based on a comprehensive, refreshed record that reflects the most current evidence regarding the media marketplace.

The newspaper/broadcast cross-ownership (NBCO) rule adopted in the Second Report and Order generally prohibits common ownership of a broadcast station and

daily newspaper in the same local market, but provides for a modest loosening of the previous ban on cross-ownership. The modifications include: (1) modifying the rule to update its analog parameters to reflect the transition to digital television; (2) in order to focus the application of the rule more precisely on the areas served by broadcast stations and newspapers, revising the trigger of the NBCO Rule to consider both the contour of the television or radio station involved, and whether the station and the newspaper are located in the same Nielsen DMA or Audio Market (if any); (3) in recognition of the fact that a proposed merger involving a failed or failing entity does not present a significant risk to viewpoint diversity, adopting an explicit exception to the NBCO Rule for proposed mergers involving a failed or failing broadcast station or newspaper; and (4) considering requests for waiver of the NBCO Rule on a case-by-case basis and granting relief from the rule if the applicants can show that the proposed merger will not unduly harm viewpoint diversity in the market.

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 to be completed?**

Response: The Commission's Biennial Review of Telecommunications Regulations is currently on circulation with the FCC's Commissioners and I am hopeful that it is adopted in the near future.

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

Response: The Biennial Review of Telecommunications Regulations, which is on circulation, abides by the requirements enumerated in 47 U.S.C. § 161. This Section requires the Commission to (1) review biennially its regulations "that apply to the operations or activities of any provider of telecommunications service," and (2) "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." Accordingly, the Commission's 2016 Biennial Review will include the rules adopted in the February 2015 Open Internet Order.

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?

Response: Attorneys from the FCC's Office of General Counsel met with attorneys from the Copyright Office's (USCO) Office of General Counsel on June 30, 2016 to discuss the potential copyright implications of the NPRM. The comments of USCO representatives were substantially similar to the written analysis the Register of Copyrights provided in her letter of August 3, 2016. This letter has been entered into the record of our proceeding. I should also note that our record also includes comments from numerous copyright academics stating that nothing in the Commission's proposal creates a compulsory license.

The Order on circulation would employ an apps-based approach that ensures that MVPDs continue to oversee the delivery of content from end-to-end. This approach ensures copyright protections, licensing agreements, and contracts between MVPDs and programmers remain firmly intact.

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.

Response: The Order on circulation would limit burdens on small and medium-sized providers while ensuring choice for the majority of pay-TV consumers. Specifically, the Order would exempt MVPDs with 400,000 or fewer subscribers from the rules. This is the same benchmark the Commission uses to define small providers for other purposes. In addition, medium-sized providers, defined as providers with less than one million subscribers but more than 400,000 subscribers, would receive an additional two years to comply with our apps-based approach.

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 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?**

Response: The FCC has a long history of protecting the privacy of consumers of communications services. Consistent with the Federal Trade Commission's input, the Order on circulation would employ an apps-based approach that requires that the privacy protections that exist today for consumers of pay-TV providers will be preserved no matter what device is used.

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?**

Response: I felt that the initial one-page ex parte filed by NCTA lacked many important details that would help us accurately assess how much competition we could expect in

this market. As we learned during the CableCard regime, details matter when it comes to competition in the market. Since my appearance before your Committee, I am encouraged that stakeholders came to the table to provide additional information at my staff's request. During the course of those meetings, Commission staff gained an understanding that some MVPDs would choose to deliver an HTML5 app through a gateway device and others would choose to deliver an HTML5 app without a gateway. The exchange of information was valuable input to our process and the apps-based approach envisioned by the Order on circulation incorporates a number of important features suggested by NCTA and other industry stakeholders.

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)**

Response: By letter dated June 6, 2014, PMCM notified a number of multichannel video programming distributors (MVPDs) in the New York City designated market area (DMA) that WJLP would commence operations in August 2014, that it was electing mandatory carriage on all cable systems operated in the DMA, and that it was requesting carriage on channel 3. On July 25, 2014, the Media Bureau granted the requests filed by several MVPDs that they be allowed to defer carrying PMCM's station until there was a decision on the appropriate virtual channel number for the station. A station's cable channel position is usually determined by its virtual channel number and at that time, the licensees of other television stations in the area that were using virtual channel 3 objected to PMCM's use of virtual channel 3. PMCM filed its August 2014 application for review (AFR) and on March 17, 2015, a Petition for Issuance of Writ of Mandamus asking the court of appeals to order the Commission to take immediate action on the AFR, which the court dismissed. On June 5, 2015, the Bureau released an order ruling that PMCM must use virtual channel 33 and, on June 6, 2015, lifted the deferral, enabling PMCM to be carried on MVPD systems. PMCM filed another AFR of the Bureau's June 6 action, arguing that it appears to coerce PMCM into abandoning its channel 3 request in order to avoid further delay in obtaining a Commission ruling on its cable placement rights. After the June 6, 2015 lifting of the deferral, PMCM negotiated carriage on the MVPDs on channels 8, 33, and 1239. The August 2014 AFR will be dealt with at the same time the other pending AFRs, referenced below, will be decided.

    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**

Response: On October 3, 2014 Meredith, ION Media License Company (ION), and CBS Broadcasting, Inc. (CBS), made a joint filing stating that as of September 30, 2014 PMCM's station had commenced program-length commercial network (ME-TV) programming, identifying itself as "Channel 3" and using virtual channel 3.10. By letter dated October 23, 2014, the Video Division directed WJLP to use virtual channel 33 on an interim basis pending a decision in Docket No. 14-150, and after PMCM failed to comply, suspended program test authority for WJLP effective November 10, 2014, indicating that program test authority would be reinstated upon notification that PMCM would operate the station using virtual channel 33 on an interim basis. PMCM filed an Emergency Petition for Writ of Mandamus with the United States Court of Appeals for the District of Columbia Circuit on November 10, 2014, asking the court to order the Commission to rescind or stay the effectiveness of the suspension of program test authority. A temporary stay of the suspension of program test authority was imposed by the Video Division of the Media Bureau, and extended by the court, and by order dated February 27, 2015, the court denied the petition for writ of mandamus and dissolved its stay. Accordingly, beginning March 16, 2015, WJLP operated pursuant to program test authority using virtual channel 33 on an interim basis as required by the 2014 Letter Orders. The Bureau issued its merits decision in July 2015 ruling that PMCM's appropriate virtual channel is 33, which supersedes the interim decision which PMCM challenges in the AFR. This AFR will be dealt with at the same time the other pending AFRs are decided.

c. Application for Review filed July 6, 2015 (challenging Bureau's final assignment of virtual channel 33 to WJLP) MM Docket No. 14-150

Response: On May 17, 2016, the Media Bureau issued three must-carry decisions denying PMCM's channel positioning complaints against several MVPDs. While the June 2015 merits decision on the assignment of virtual channel 33 and the May 2016 must-carry decisions are separate proceedings, because PMCM's cable channel position is tied to its virtual channel, we expect that the decisions in these two proceedings will be issued at the same time and also will resolve the 2014 AFRs referenced above.

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.

Response: Professor Swire's working paper "Online Privacy and ISPs: ISP Access to Consumer Data is Limited and Often Less than Access by Others" was filed as a comment in the broadband privacy proceeding docket on May 24, 2016. I can assure you

Commission staff is considering Professor Swire's paper as we work towards crafting final rules protecting the privacy of broadband Internet access service providers.

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?**

Response: Commission staff reviewed an extensive number of materials when developing the proposed rules for the broadband privacy NPRM. Professor Swire's paper offers a window into the data collection practices of a number of different types of entities in that ecosystem.

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?**

Response: The goal of the Commission's proceeding is to design a framework that will give consumers the tools they need to control how their personal information is used by their broadband provider. The NPRM sought comment on one such framework, as well as on a range of alternatives. The NPRM also invited commenters to propose other frameworks. The NPRM specifically sought comment on which approaches best balance consumer benefits while minimizing potential regulatory burdens on broadband providers. Interested stakeholders submitted comments on the various frameworks. These comments are being reviewed and will be considered as the Commission develops final rules.

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?**

Response: The interest of consumers animates our entire privacy proceeding, and I believe that providing consumers with notice, transparency, and choice over how their personal information is used by broadband Internet access service providers will advance that goal. The adoption of an NPRM marks the start of the rulemaking process. All members of the public have an opportunity to offer their views of how best to protect broadband customer privacy and different approaches' impact on consumers.

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.**

a. How long does the Commission plan to wait for this process to be complete?

Response: On September 21st, the Wi-Fi Alliance published a co-existence test plan that can be used to evaluate sharing between LTE-U devices and Wi-Fi. Various compromises were made by all of the stakeholders to achieve this result and numerous stakeholders representing both LTE-U and Wi-Fi interests have hailed the process as a success. We are pleased with the progress that has been made and look forward to continued cooperation in the testing of LTE-U devices. In addition, we have announced that we will grant equipment authorization for LAA devices and granted certification for the first such device on September 23, 2016.

b. 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.

Response: The Wi-Fi Alliance has published its co-existence test plan and we look forward to the results of the first co-existence tests. We worked with the parties to facilitate an expeditious resolution to this matter that protects consumers and promotes competition. As a policy and practical matter, it is more advantageous to deal with potential co-existence issues prior to deployment, versus risk disruption of systems where large numbers of consumers and industries depend upon a specific technology such as Wi-Fi. We deployed engineering staff to work with the parties on a routine basis and, as noted above, have already granted equipment authorization for the first LAA device.

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.

a. But isn't the spectrum on which Wi-Fi operates, and on which LTE-U would operate, specifically intended for "permission-less innovation?"

Response: The cornerstone of our Part 15 rules governing unlicensed devices is that the user must accept potential interference from other devices. But the key to the success of our unlicensed spectrum rules is the development and application of industry standards to encourage fair co-existence.

LTE-U, however, was developed as an equipment specification, outside of industry standards like those of the IEEE. Therefore, given significant stakeholder concerns about the approval of equipment that used a specification that had not been subject to the industry standard-setting process, we encouraged stakeholders to work together to ensure fair co-existence. Both Wi-Fi and LTE-U stakeholders agreed to the Wi-Fi Alliance's process and presented it to the Commission as their preferred path to ensuring fair co-existence.

Conversely, LAA is not just a specification but rather a 3rd Generation Partnership Project (3GPP) standard.[1] Therefore, the Commission has required no further coordination in establishing fair co-existence and, as noted above, we granted equipment certification for the first LAA device on September 23, 2016.

b. 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?

Response: As noted above, the rules are predicated upon fair co-existence and supported by the development and application of consistent industry standards. As a policy and practical matter, it is better to resolve the problems related to co-existence prior to deployment, versus potentially allowing the disruption of systems routinely used by consumers. Had LTE-U been tested and approved as an industry standard comparable to LAA, this process would have been less arduous.

c. 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?

Response: Other, less pervasive, technologies that are not based on an industry standard are not analogous to LTE-U. LTE-U presents the prospect of rapid and widespread deployment by carriers of wireless systems operating in the same space and spectrum currently relied upon by millions of consumers. There were legitimate questions about how this potential widespread deployment in the unlicensed space might affect those consumers. We have acted responsibly in seeking to ensure that that industry works together to ensure that this doesn't happen and the various technologies can co-exist. The process itself was developed and agreed to by both LTE-U and Wi-Fi stakeholders. This process has been thorough, has involved compromises on both sides and numerous stakeholders representing both LTE-U and Wi-Fi interests have hailed it as a success.

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

[1] The 3GPP is a collaboration between groups of telecommunications associations. 3GPP standardization encompasses Radio, Core Network and Service architecture.

Privacy Shield by calling into question the adequacy of the FTC's privacy framework which is a key component of this important international agreement?

Response: I appreciate your concerns regarding the broadband privacy proposal. As noted above, this proposal is neither adopted nor final. Thus far, the Commission has received comments from the Federal Trade Commission (FTC), industry, consumers, academics, and various other stakeholders regarding the proposed broadband privacy rules. The Commission will consider this input as it develops final rules.

The Commission's proposed privacy rules focus on transparency, choice, and security—the same concepts that underlie the internationally recognized Fair Information Practices Principles (FIPPs) that have informed our nation's thinking on privacy best practices while providing the framework for most of our federal privacy statutes. And Congress has enacted sector-specific privacy protections in a variety of areas, tasking various agencies beyond the FCC and FTC with implementing and overseeing regulations in these areas. For example, the Department of Health and Human Services regulates the privacy practices of "covered entities" under HIPAA—such as doctors, hospitals, and health insurance plans.

As noted in the Commission's broadband privacy NPRM, nothing in the proposed rules prevents consumers from receiving targeted recommendations or any other form of content they wish to receive. The NPRM supports the ability of broadband networks to be able to provide personalized services, including advertising, to consumers. However, the NPRM embraces the basic principle that informed choice is necessary to protect the fundamental interest in privacy.

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?**

Response: The Media Bureau issued a Public Notice seeking comment on the ATSC 3.0 Petition in April 2016, and the comment cycle closed this summer. Commission staff are continuing to review the record, but this will take some time as the record raises a number of complex issues.

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?

Response: With respect to cybersecurity, the Commission has focused on a voluntary approach, as you note. With respect to protecting the privacy and data security of the telecommunications' customers' confidential information, the Commission has had rules in place for many years. Our current rules were adopted to implement the consumer protections provided by Congress in section 222 of the Communications Act. In the 2015 Open Internet Order, we concluded that Section 222 should be applied to the broadband connections consumers use to reach the Internet. The FCC's broadband privacy proceeding applies existing statutory authority solely to the existing class of services that Congress included within the scope of Title II, namely the delivery of telecommunications services. The Commission's broadband privacy NPRM posed numerous questions on the best approach to protecting consumers' privacy and security when they use broadband services. Numerous parties have submitted comments in response. These comments are being reviewed and will be considered as the Commission develops final rules.

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?

Response: The proposed data security framework included in the broadband privacy proposal is based on existing federal data security laws and regulations and proposed best practices that recognize that privacy and security are inextricably linked and require affirmative safeguards to protect against unauthorized access of consumer data. The NPRM also specifically sought comment on applying NIST's cybersecurity authentication standards to our proposed authentication proposal. The Commission has received many comments about ways it could clarify or modify the proposed data security requirements to ensure alignment with the NIST Framework, and staff is carefully reviewing and considering those comments.

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?

Response: As I mentioned above, the security framework proposed in the broadband privacy NPRM is based on many existing federal frameworks. Additionally, the NPRM specifically referenced the Cybersecurity Information Sharing Act of 2015 (CISA) as an example of a statute that explicitly permits particular types of information sharing when seeking comment on our proposal to allow providers to use or disclose CPNI whenever reasonably necessary to protect themselves or others from cybersecurity threats under the Commissions' Section 222(d)(2) authority. The Commission has received many comments about ways it could clarify or modify the proposed data security requirements to ensure alignment with CISA, and staff is carefully reviewing and considering those comments.

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?

Response: The Commission's broadband privacy NPRM posed numerous questions on the best approach to protecting consumers' privacy and security when they use broadband services. The NPRM recognizes the importance of giving consumers tools to make decisions about the use and sharing of their information. At the same time, it recognizes the importance of network security. The comments filed by the group of experts you reference provide valuable insights into the importance of cybersecurity research and their recommendations will be considered as we develop final rules.

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?

Response: The Commission on Enhancing National Cybersecurity is performing work that is important to all Americans. The Federal Communications Commission's privacy NPRM focuses on basic consumer protection issues of how best to protect the privacy and security of customer information that is collected by telecommunications carriers. In so doing, we look to the work done by the FTC and others on privacy and data security, as well as the work NIST and the FTC have done on comparing the NIST cybersecurity framework with the FTC's approach to data security in the consumer protection context. That work clearly demonstrates that cybersecurity and customer data security best practices are well harmonized.

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?

Response: I believe that our proposed broadband privacy rules fit right alongside the numerous sector-specific privacy requirements tailored to different industries and

environments. Congress entrusted the FCC with authority over the use and sharing of such information by providers of telecommunications services in section 222 of the Communications Act. In addition to such requirements for telecommunications services, there are sector-specific privacy regulations for financial privacy, health information privacy, education privacy, and privacy of consumer reporting information.

Regardless of the sector, consumers deserve to have the tools they need to control their information, including to know what information about them is being collected, how that information is shared, and how they can exercise choice over what is disclosed to third parties. Our goal is to protect consumers' privacy in our particular jurisdiction—over telecommunications service providers—which is why we are proposing rules applicable to broadband internet access service providers. Consumers continue to actively participate in the public comment process of this ongoing rulemaking, so we are continuing to learn more about consumers' privacy expectations.

7. **Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Servicers 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?**

Response: Following the Commission's *Broadnet* decision, it issued an order on August 2 pursuant to the *Bipartisan Budget Act of 2015* to address calls by collectors of federally owned or guaranteed student loan debt. As you know, the *Bipartisan Budget Act of 2015* directed the Commission to revise its rules related to the Telephone Consumer Protection Act (TCPA) and included authority to place number and duration limits on robocalls "made solely to collect a debt owed to or guaranteed by the United States." In the resulting order, the Commission set a limit of three robocalls per month, which applies to calls made by or on behalf of the federal government, including calls by debt servicers who contract with the government. However, in recognition that these calls can benefit consumers, the Commission gave flexibility to federal agencies to request a waiver seeking higher numerical limits if needed. The Commission also determined to allow debt servicing (not just debt collection) calls concerning debts that are at imminent risk of delinquency to help students stay current and repay their loans.

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?**

Response: The Commission, in its June 2015 Declaratory Ruling on Telephone Consumer Protection Act (TCPA) issues, granted relief for health-care related robocalls. First, the Commission created an exemption that specifically allowed time-sensitive healthcare-related calls to be made more easily, while also ensuring that consumers who do not wish to receive such calls could readily opt out of future calls. Similarly, the Commission also issued guidance that gave healthcare providers greater assurance regarding the circumstances under which they could make automated calls to wireless phone numbers provided by patients.

The Commission had sought public comment on all of the petitions addressed in the June 2015 Declaratory Ruling, as it does with all proceedings. Consequently, the Commission granted relief based on a robust public record on the healthcare-related issues and gave full consideration to the impact its ruling would have on all petitioners, including healthcare providers, and businesses of all sizes.

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?**

Response: In the Commission's June 2015 Declaratory Ruling on TCPA issues, automated healthcare-related calls to wireless numbers, both those that concern the provision of healthcare services and those that concern payment, can be made by virtue of the prior express consent conveyed when the patient provides such a phone number to the healthcare provider, absent instructions to the contrary. Calls by both healthcare providers and those by or on behalf of the HIPAA-covered entity and business associates acting on its behalf are addressed by the Commission's consent ruling, as requested by the healthcare association that petitioned the Commission on this issue. In separately granting an exemption to the TCPA's consent requirement, however, the Commission focused on calls that were particularly time-sensitive, for example, calls concerning post-

discharge follow-up treatment. The Commission determined, however, that calls concerning billing and accounts did not involve the same exigency and therefore did not warrant the same treatment as calls made for healthcare treatment purposes. Entities who wish to make such calls are free, of course, to obtain consumers' prior express consent when it is required.

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?**

Response: The Commission does allow robocallers an opportunity to remain free of TCPA liability in the event of an incorrectly-called party. Specifically, the June 2015 Declaratory Ruling affords robocallers an opportunity to discover a reassignment after one incorrect call if best practices, including checking reassigned-numbers databases, do not reveal a reassignment. The Commission's decision on this point provides callers greater protection from liability than some federal courts, which have held that all robocalls to a consumer other than the former subscriber who originally provided consent are subject to TCPA liability under the statute as written by Congress.

In the same Declaratory Ruling, the Commission also issued guidance that gave healthcare callers greater assurance regarding the circumstances under which they could make automated calls to wireless phone numbers provided by patients. On this issue, the Commission clarified that prior express consent to call a wireless number is conveyed when the patient provides the number to the healthcare provider, absent instructions to the contrary. The Commission has never recognized, however, that an established business relationship is a substitute for the statutorily required express consent in the context of robocalls to wireless numbers.

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?**

Response: The Commission has recently adopted statutorily mandated rules that will govern all robocalls to collect debts owed to or guaranteed by the federal government.

Section 301 of the Bipartisan Budget Act of 2015 creates an exception to the TCPA's prior express consent requirement for automated calls and texts to wireless telephones for the purpose of collecting debts owed to or guaranteed by the United States. In this law, Congress also gave the FCC specific authority to limit the number and duration of such calls.

On August 2, 2016, in accordance with Section 301's statutory deadline, the Commission adopted an Order establishing rules for federal debt collection robocalls. The rules limit the number of federal debt collection robocalls, including text messages, to three calls per month, ensure the correct person is called, and allow consumers to stop receiving such calls upon request. The record in this proceeding and the Commission's complaint data make clear that consumers want and deserve control over the calls and text messages they receive. Unwanted calls continue to be the top consumer complaint the Commission receives, and it is vital that we continue to use all the tools at our disposal to help protect consumers against such calls.

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?

Response: The Commission's July 5, 2016 Declaratory Ruling addressed three petitions asking for clarification on how the TCPA applies to calls made by the government or government contractors. Addressing this issue with regard to the federal government, the Commission clarified 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. In reaching this decision, the Commission interpreted the language of the TCPA, focusing on whether the federal government and its contractors were among the "persons" that the TCPA sought to govern. The Commission concluded that the term "person" does not include the federal government or its agents who are validly authorized to make calls on the government's behalf, based on relevant court and Commission decisions. The Commission noted that its statutory interpretation is supported by a 2016 Supreme Court decision. To the extent that a research polling firm is an agent of the federal government, it would be covered by this declaratory ruling, just as petitioner RTI would be under similar circumstances.

Two parties have petitioned the Commission to reconsider its July 5, 2016 Declaratory Ruling, and we will consider the views of all commenting parties in the course of reaching a decision on whether to grant reconsideration of any part of this decision.

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?

Response: The Commission's July 5, 2016 Declaratory Ruling does not extend to other, non-federal government calls. The ruling addresses only federal robocalls as did the Supreme Court's recent decision on the Telephone Consumer Protection Act. We continue to evaluate the record on the separate issue of state and local government robocalls, and expect to address the issues unique to state and local governments in a future proceeding.

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?"**

Response: Last month, the Commission released a Declaratory Ruling addressing a petition filed by Blackboard, Inc. confirming that school callers may lawfully make robocalls and send automated texts to student family wireless phones pursuant to an "emergency purpose" exception to the TCPA's consent requirement, or with prior express consent for non-emergency calls about school-related matters, without violating the TCPA. Schools can make robocalls regarding the health and safety of students and faculty, including unexcused absences, weather closures, and incidents of threats or imminent danger to the school, such as a lock down, pursuant to this "emergency purpose" exception to the TCPA's consent requirement for robocalls to wireless phones. Schools have prior express consent for robocalls closely relating to the educational mission of the school or to official school activities when a parent/guardian or student provides their wireless number to the school as a contact number. By tailoring relief to the narrow circumstances presented in this petition, we ensure the TCPA does not stand in the way of welcome and expected communications from schools, without diluting the TCPA's core consumer protections.

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?**

Response: The Commission does allow robocallers an opportunity to remain free of TCPA liability in the event of an incorrectly-called party. Specifically, the June 2015 Declaratory Ruling affords robocallers an opportunity to discover a reassignment after one incorrect call if best practices, including checking reassigned-numbers databases, do not reveal a reassignment. The Commission's decision on this point provides callers greater protection from liability than some federal courts, which have held that all robocalls to a consumer other than the former subscriber who originally provided consent are subject to TCPA liability under the statute as written by Congress. Moreover, as the Commission stated in its June 2015 Declaratory Ruling, the TCPA requires that robocallers obtain the subscriber's consent and places no obligation on consumers who may have inherited a phone number to notify the robocaller of the reassignment. The Commission found that best practices enable robocallers to detect reassignments, which strikes the proper balance between their right to contact consumers who want those calls and protecting consumers who do not. Nevertheless, the Commission will continue to

encourage further development of best practices so that businesses trying to reach their customers do not make unwanted robocalls.

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?

Response: The Commission's June 2015 Declaratory Ruling provides a roadmap for businesses who wish to comply with the TCPA. The June 2015 Declaratory Ruling applied existing precedent regarding the TCPA's autodialer definition to address specific requests for clarification. Moreover, while the Commission was not asked to address specific types of equipment, the Commission provided additional clarity regarding relevant factors in determining what equipment constitutes an autodialer, including the amount of effort it would take to modify a piece of equipment to have the capability to dial random or sequential numbers.

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"?

Response: The Commission's June 2015 Declaratory Ruling noted that the Commission has long recognized that a basic function of autodialing equipment is the capacity to dial numbers without human intervention. The Commission further noted that how the human intervention element applies to a particular piece of equipment is specific to each individual piece of equipment, based on how the equipment functions and depends on human intervention, and is therefore a case-by-case determination. As such, the consideration of human intervention by courts in particular cases is consistent with the general approach outlined by the Commission in making such determinations about whether specific dialing equipment is an autodialer.

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?

Response: The TCPA empowers consumers to decide which robocalls and text messages they receive, with heightened protection for wireless consumers, for whom robocalls can be costly and particularly intrusive. Numerous parties have asked the Commission to address particular questions regarding the law's application. In resolving these questions, the 2015 TCPA Declaratory Ruling not only preserved consumers' rights to stop unwanted robocalls, including both voice calls and texts, but also benefited good-faith callers by clarifying whether conduct violates the TCPA and by detailing simple guidance intended to assist callers in avoiding violations and consequent litigation.

The Commission's series of orders addressing the TCPA, including 2015 Declaratory Ruling, provide guidance that should assist callers in determining what kinds of calls are consistent with the TCPA. The Commission stands ready to continue this assistance by addressing pending or future questions about the TCPA's application, and also to implement any changes to the TCPA that Congress may choose to enact.

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"?**

Response: We greatly appreciate and respect the FTC's commitment to consumer privacy, which was reflected in their decision to file comments in this proceeding and in the substance of their filing. The FTC's comments are an important part of the record upon which the Commission will rely in adopting final broadband privacy rules. Regarding whether the FCC should modify its proposed rules, we are reviewing the substantial record in this proceeding and continuing to meet with stakeholders, which will inform the Commission's final rules.

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.[2] The SBA filed a similar letter on June 27, raising concerns about the FCC's broadband privacy proposal.[3] 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

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[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.

[3] 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/FlNAL BIAS%20Privacy-Advocacy%20Reply%20Comments-%20May%202016.pdf.

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?

Response: The Commission takes seriously its responsibilities under the Regulatory Flexibility Act (RFA). As required by the RFA, the broadband privacy Notice of Proposed Rulemaking (NPRM) and set-top box Notice of Proposed Rulemaking sought comment on an Initial Regulatory Flexibility Analysis (IRFA) of the proposed rules. Both IRFAs include an estimate of the number and types of small entities that the proposals could potentially impact, the projected recordkeeping, reporting and other compliance requirements, and a description of any significant alternatives to the proposed rules that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rules on small entities.[4] In addition to the IRFA, the broadband privacy NPRM repeatedly seeks specific comment on the potential costs of our proposals on small broadband Internet access service (BIAS) providers, as well as ways to mitigate potential burdens and costs of the rules. Similarly, the set-top box NPRM repeatedly sought specific comment on the potential costs of our proposals on small cable operators as well as ways to mitigate potential burdens and costs of the rules.

Final rules have not been adopted in either proceeding. The Commission continues to carefully review the comments identifying quantifiable costs and benefits in both proceedings. In addition, as the RFA requires, Commission staff continue to conduct outreach to determine how to best accommodate small entities as it develops final rules.[5] When final rules are adopted, the Commission's decisions will incorporate consideration of the impacts of the rules on small entities and will include a Final Regulatory Flexibility Analysis (FRFA) that fulfills the requirements of the RFA. The comments submitted by the U.S. Small Business Administration's Office of Advocacy will be addressed in the FRFA in both proceedings.[6]

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

[4] *See* 5 U.S.C. § 603(b), (c).
[5] *See* 5 U.S.C. § 603(a)(3), (a)(4).
[6] *See* 5 U.S.C. § 604(a)(3).

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?

Response: The *Rate-of-Return Reform Order* adopted by the Commission was the result of a bipartisan effort, aided by the rate-of-return carriers themselves, to expand rural broadband deployment by modernizing the USF high-cost support program for rate-of-return carriers, including by providing support for standalone broadband.

As a condition of receiving high-cost support, the Commission requires carriers to offer voice and broadband services in supported areas at rates that are reasonably comparable to rates for similar services in urban areas. We annually monitor whether carriers are offering service—both fixed voice and fixed broadband—in rural areas at rates that are reasonably comparable to rates for that same service in urban areas. Support recipients are required to report if they offer service at rates at no more than the applicable benchmark.

The data we have received to date through this annual monitoring indicates that rural consumers are paying reasonably comparable rates for broadband services to those paid by urban consumers. In the event we become aware of extremely high rates in the future, we would expect to take appropriate action to ensure that consumers in rural areas continue to pay reasonably comparable rates regardless of the service they purchase.

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?**

Response: The Commission is engaged in continuing efforts to address specific problems reported by rural customers and carriers. The FCC continues to handle, on an ongoing basis, individual rural call completion complaints filed with the Enforcement Bureau and the Consumer and Governmental Affairs Bureau. When the Enforcement Bureau serves a provider with a complaint filed at the Commission by a rural carrier, providers are requested to respond within two weeks, leading to prompt resolution of specific problems. Complaint numbers in 2015 were down from those reported in 2014, particularly in the last five months of 2015. Although the Enforcement Bureau does not discuss its ongoing investigations as it may prejudice the proceedings or affect their outcome, the Bureau recently entered into its fifth resolution of a rural call completion investigation. In this case, a long distance provider agreed to pay a civil penalty of $100,000 for failing to ensure that its intermediate providers were performing adequately in delivering service to a rural consumer and for failing to cooperate with the Commission's investigation of the problem. This was the first investigation arising out of

an informal consumer complaint on this issue and is part of the Commission's ongoing efforts to address rural call completion problems.

The Commission is also engaged in an ongoing rural call completion data collection effort, and the Commission continues to examine this data to help inform its understanding of rural call completion problems and determination of next steps. Additionally, consistent with the terms of the Rural Call Completion Order, we continue to work with our partners at state utility commissions to provide, upon request, access to state call completion data. Furthermore, pursuant to the Order, the Wireline Competition Bureau will issue a report regarding the data collection by August 30, 2017.

We are also working with the industry to assist long distance providers by identifying rural competitive local exchange carriers (CLECs) that are affiliated with rural incumbent local exchange carriers (ILECs) or whose operating company numbers (OCNs) do not appear on the annually published NECA list of rural ILECs. Although the Commission's prohibition against call blocking extends equally to all calls, regardless of whether the destination OCN appears on the NECA list, the list helps long distance providers identify individual rural destinations. We have received complaints from rural LECs that are not incumbent LECs and therefore are not on the NECA list. We have asked NTCA to identify these rural CLECs so that we can make that list public, which should enable long distance providers to more carefully monitor their routing to these rural CLECs as well as to ILECs on the NECA list and ensure compliance with our rules.

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?**

Response: The Commission's *2016 Lifeline Modernization Order* takes the next major step in fostering the Commission's commitment to universal service, and modernizes the program to support broadband and refocuses it to meet the 21st century's communications challenges. One of the key components of this modernization was to increase participation by broadband providers and thereby increase availability and consumer choice for this interstate service. To facilitate a streamlined, nationwide entry for Lifeline broadband providers (LBPs) to provide Lifeline-supported broadband Internet access service (BIAS), the Commission established its authority to designate LBPs as eligible telecommunications carriers (ETCs) pursuant to its authority under section 214(e)(6) of the Telecommunications Act of 1996. This issue is currently subject to litigation in the United States Court of Appeals for the D.C. Circuit.

At the same time, the *2016 Lifeline Modernization Order* makes clear that states will continue to play an important role in the Lifeline program. States maintain their authority to designate new Lifeline providers—for voice, broadband or both—that are not seeking nationwide approval. States are also able to manage their own state Lifeline programs and continue to provide invaluable protections against waste, fraud, and abuse.

Regulating Lifeline providers remains a shared responsibility between state and federal government, and we value states' continuing contributions to protecting Lifeline.

5. Chairman Wheeler, in its decision making to create a national verifier did the FCC consult with database experts during its deliberations?

Response: Prior to adopting the *2016 Lifeline Modernization Order*, Commission staff and the Universal Service Administrative Company (USAC) obtained significant information about the feasibility and possible design of a National Verifier. Based on the *2015 Further Notice of Proposed Rulemaking* seeking comment on a national verifier concept, USAC proactively began to research how such a system might be built and shared their findings with the Commission staff considering the decision and drafting the *2016 Lifeline Modernization Order*. In particular, USAC issued a Request for Information (RFI) to obtain industry expertise about how a national verification system might technically operate and publicly posted a detailed summary of the responses received. Through this process, USAC received detailed information and ideas from nine firms that are leaders in this industry, and learned valuable information regarding how a national verification system might be built. For instance, USAC learned there are already entities that have connected all or nearly all of the state Medicaid data which presents the opportunity for USAC to use such gateways to more efficiently verify eligibility. Additionally, Bureau staff met with other federal agencies (*e.g.,* HUD, VA) who run programs used to establish eligibility for Lifeline to understand existing data sharing agreements and discuss possibilities for database access. Both HUD and the State of Illinois submitted statements to the FCC record (Docket 11-42) offering access to their respective databases for eligibility verification.

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?

Response: The National Verifier established in the *2016 Lifeline Modernization Order* is best viewed as the culmination of successive efforts to remove waste, fraud, and abuse from the Lifeline program. The *2012 Lifeline Reform Order* implemented the National Lifeline Accountability Database (NLAD) and discussed how it would be a stepping stone to a more complete eligibility database. In the *FNPRM* adopted with the *2012 Lifeline Reform Order*, the Commission specifically asked for comments on such a national eligibility verification system. By establishing the NLAD and seeking comment on a more comprehensive system in 2012, the Commission was addressing the most critical issue first (*i.e.,* duplicates) and also laying the foundation for a broader, nationwide eligibility system. The experience gained from developing and continuously refining the NLAD, along with comments from the notices of proposed rulemakings and other information recently collected from experts (as discussed above), mean that USAC and the Commission are well positioned to implement a functional national verifier.

b. If you did consult database experts, who were these experts and what were their recommendations?

Response: USAC received nine responses to its RFI that included recommendations on many aspects of a national eligibility verification system, including interfacing with consumers, eligibility review response times, integrating with federal and state eligibility databases, and system security and privacy. The importance of integration with existing databases was highlighted and respondents stressed the importance of the technical and legal processes (*e.g.,* data sharing agreements, privacy concerns).

Given the importance to a national eligibility verification system of utilizing existing state database information, USAC began discussions with states following the adoption in June of the *2015 Further Notice of Proposed Rulemaking* to understand the landscape of state eligibility data and requirements for access. During this process, USAC and the Wireline Competition Bureau staff also learned that there are a number of third-party data aggregators (*e.g.,* Experian, Voxiva, Equifax) that can provide eligibility verification services for beneficiaries of specific programs (*e.g.,* Medicaid) through a single database connection. The majority of respondents indicated they have experience connecting to various benefit programs to determine eligibility, with several specifically mentioning Lifeline.

Similar to the variety of state processes, respondents noted that there are wide variations in eligibility verification response times among data sources, ranging from real time (for full automation) to four days (for documentation review). Respondents were supportive of direct consumer interaction with the verifier and suggested giving providers the option to access the system in order to assist consumers.

c. How much were these experts paid?

Response: The expert-provided information prior to the *2016 Lifeline Modernization Order* (e.g. RFI responses) did not require payment but it did serve to validate the hypothesis that a national system is feasible. Since the *2016 Lifeline Modernization Order* was adopted in March 2016, USAC has retained the services of consultants to inform the design of the National Verifier. Recognizing the importance of technical expertise to the National Verifier, in the *2016 Lifeline Modernization Order*, the Commission did not over-prescribe technical characteristics of the verifier but instead to set out performance objectives for the system in line with the policy goals. This approach meant that the Commission could outline its expectations about how the National Verifier would function while allowing USAC to procure services in the most cost effective manner.

d. Were the recommendations of these database experts made public and comment sought on their recommendations?

Response: A summary of the recommendations obtained through the RFI issued by USAC were posted publicly on USAC's website on March 4, 2016 (see http://www.usac.org/_res/documents/about/quarterly-stats/LI/RFI-Implementation-of-a-Potential-National-Verifier.pdf) prior to the adoption of the *2016 Lifeline Modernization Order*. The public had an opportunity to comment on potential data sources and technical best practices in the FCC record to inform the key objectives of the National

Verifier. Additionally, the *2016 Lifeline Modernization Order* directs USAC, as it develops and implements the National Verifier, to engage meaningfully with stakeholders "who may have valuable recommendations on a variety of implementation areas, including but not limited to, best practices for IT requirements, efficient interface for electronic and manual eligibility pathways, effective payment pathways, and effective communication strategies for consumer beneficiaries." As a result, USAC has been and continues to be engaged in ongoing dialogue with stakeholders and experts to ensure a successful design and implementation.

e. Were estimates on the cost of creating the national verifier made and if so what is the estimated cost?

Response: The key policy objectives of the National Verifier are to provide substantial cost savings through efficiencies and reductions in waste, fraud, and abuse. The cost of the *status quo* operations of the Lifeline program was a primary consideration in the creation of the National Verifier because the burden of verifying eligibility currently falls on Lifeline providers. The estimated cost to the providers of determining subscriber eligibility and maintaining compliance with program rules is over $560 million annually. Moreover, given the additional requirement to comply with state-imposed regulations, providers' estimates of overall costs exceed $600 million annually. These costs fall primarily on the Lifeline providers and their consumers. The Commission expects the National Verifier to substantially lower these costs to the public and have a net positive benefit.

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?

Response: USAC has supplemented its own expertise with those of experienced consultants. They will develop a detailed National Verifier plan, which will recommend actions USAC should take, including with respect to USAC's current and future personnel needs to ensure its expertise aligns with the needs of the National Verifier.

g. If not, what will be the cost to the program for USAC to obtain such expertise?

Response: The cost to the program of obtaining such expertise is expected to be a small fraction of the savings realized by the program through a well-functioning National Verifier that roots out waste, fraud, and abuse in the Lifeline program. The Commission expects the National Verifier to lead to a net *reduction* in costs to the fund as well as a significant cost savings for participant Lifeline providers.

h. What alternatives to the "national verifier" plan were considered and what was the difference in costs to the program?

Response: Several alternatives were considered to establishing a National Verifier. First, the Commission considered continuing with the *status quo*, where carriers continue to verify eligibility. The estimate on file with the Office of Management and Budget is

that this costs the industry and consumers approximately $560 million annually *plus* costs due to waste, fraud, and abuse allowed as a result of carriers controlling the verification process. Significant reduction of the costs of waste, fraud, and abuse is one of the primary policy objectives of the National Verifier.

Second, a natural alternative to the national system was a system that placed the burden on each state to verify eligibility. While this was considered, several factors counseled in favor of a single national system rather than separate state verifiers. Most important was the need for a high level of consistent quality assurance in order to protect *federal* Lifeline funds. Key to achieving a high quality verification process is a single system that includes all states. Industry commenters argued that a single consistent system is critical for providers operating in more than one state, as dealing with multiple state-specific requirements leads to higher costs and greater inefficiencies (*e.g.,* see AT&T Comments at 6). Lastly, eligibility verification is a high fixed cost, low marginal cost system. As a result, a single system will be much more efficient than multiple systems since large fixed costs can be spread across the entire program. If states had to build their own systems, each state would have to invest large fixed costs separately.

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?

Response: We do not see the National Verifier as merely about accessing state program databases. In addition to verifying eligibility using data from some state programs (*i.e.,* Medicaid, SNAP), verification must also be possible with federal databases where the pertinent information is maintained at the national level (*i.e.,* SSI, HUD, VA). A verification system that only includes the state connections cannot fully support the Lifeline program. In addition, the National Verifier will also carry out many other functions to protect the integrity of the fund, such as checking *inter*-state and intra-state duplicates, conducting identity verification, handling annual re-certification, and using advanced analytics to detect fraud. No state carries out the full suite of functions required to protect the integrity of the federal Lifeline program as ordered by the Commission in the *2016 Lifeline Modernization Order*. State database connections, while very important, are only one piece of the system.

Detecting *inter*-state duplicates also requires something more than a state-specific database. A state-specific system in theory could identify intra-state duplicates and verify eligibility with state programs. Despite the inefficiency of doing so, each state could also connect to federal program databases at HUD or at the VA. However, a state system would not be able to detect whether someone applying for Lifeline in their state is also receiving support in another state. To do such a check would require that state to make agreements with all the other states. Creation of a national system of Lifeline eligibility verification avoids these inefficiencies and loopholes.

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?**

Response: As you noted, in the *Spectrum Frontiers Order and Further Notice of Proposed Rulemaking* adopted in July 2016, we declined to adopt band-specific spectrum aggregation limits because, while certain differences across these bands exist, we did not find that they were sufficient enough to significantly affect how these spectrum bands might be used. This approach mirrors our existing commercial mobile radio services (CMRS) spectrum screen, which applies across a number of bands that do not have the same technical characteristics. Moreover, Commission staff will be carefully evaluating any proposed secondary market transaction on a case-by-case basis. This careful evaluation should alert us to any meaningful difference in how these bands can be used based on the different characteristics across these bands. I can assure you that the Commission will continue to pursue its objective of ensuring that multiple providers have access to high band spectrum.

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?**

Response: The Media Bureau issued a Public Notice seeking comment on the ATSC 3.0 Petition in April 2016, and the comment cycle closed this summer. Commission staff are continuing to review the record on this important issue, but this will take some time as the record raises a number of complex issues.

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?

Response: I believe that the set-top box Order on circulation would provide minority and independent programmers with a better opportunity to reach their audiences. By providing the building blocks for a cross-platform search function, the Order would provide programmers with a greater ability to find audiences and consumers with a greater ability to access independent and minority programming. With that said, I stand by the commitment I made at the hearing to review the GAO's findings with you.

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?

Response: We find that there is merit in exploring whether, and, how potentially to extend the cable procurement requirements to the broadcasting industry. As stated in the recently adopted Second Report and Order, we will evaluate the feasibility of adopting similar procurement rules for the broadcasting industry. Additionally, we have asked the Multicultural Media, Telecom and Internet Council (MMTC) to engage with the other Bureaus at the FCC to discuss avenues for extending the procurement rules to non-media industries.

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?

Response: You are correct that the FCC has banned discriminatory practices in advertising. Specifically, the ban on discrimination in advertising contracts was adopted

in the 2008 Order. The Commission requires broadcasters who are renewing their licenses to certify that their advertising sales contracts contain nondiscrimination clauses that prohibit all forms of discrimination. The Order specifically mentions the "No Urban/No Spanish" dictates that were in some advertising contracts.

It has not been the agency's practice to inquire into the actual use of minority-owned advertisers as a follow-up to its ban on discrimination in advertising and in my view, such action would go beyond the prohibition on discrimination into the hiring and supplier practices of regulated entities. Having said that, the agency through its Office of Communications Business Opportunities (OCBO) has already engaged in outreach in this area. In March of this year, as part of its ongoing series on supplier diversity, OCBO hosted a conference and roundtable discussion regarding the advertising practices of government agencies. The roundtable included experts in government procurement from the Department of Veterans' Affairs, Department of Defense, Department of Transportation, and the FCC. The panel also included a number of minority broadcasters. The roundtable discussed how women and minority owned broadcasters and advertising agencies can participate in procurements for advertising services and how government agencies select vendors in the advertising arena.

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?**

Response: I stand by the statement you reference on July 13, 2016.

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.**

Response: Since the inception of the auction program, the Commission has considered measures that would help promote diversity in the provision of spectrum-based services and survive judicial scrutiny. The Commission's rules provide bidding credits in auctions for small businesses; such small businesses may include minority- or women-owned businesses.

In July 2015, the Commission considered in its proceeding on modernizing its competitive bidding rules certain proposals by MMTC that sought to promote diversity by providing incentives in the context of post-auction secondary market transactions. The Commission concluded that the record lacked sufficient support to warrant adopting those proposals. In so doing, the Commission observed that neither MMTC nor any other commenter had offered any specific details about how such proposals might be implemented. MMTC has sought reconsideration of that decision, and its petition for reconsideration is currently pending. We are unable to comment further on the status of that petition.

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?**

Response: Please see our above answer to question 3(a).

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?**

Response: The set-top box Order on circulation would entitle all programmers with the same protections and control over their programming as they have today. Moreover, by providing the building blocks for a cross-platform search function, the Order would provide independent and minority programmers with a greater ability to find audiences and consumers with a greater ability to access independent and minority programming. For those few independent and minority-owned programmers who already have carriage on the traditional pay-TV system, nothing in the Commission's proposal disrupts existing contractual relationships between programmers and MVPDs. In fact, because the content will be delivered and controlled end-to-end by the MVPDs, the protection of the programming contract terms remains in the control of the MVPD.

With respect to channel carriage and programming guides, the Order on circulation would require the MVPD to offer consumers access to the exact same programming and playback features that the MVPD makes available to consumers who choose to use a traditional set-top box.

The Honorable David Loebsack

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?**

Response: The *Rate-of-Return Reform Order* adopted by the Commission was the result of a bipartisan effort, aided by the rate-of-return carriers themselves. Commission staff continues to maintain an open dialogue with the carriers and their trade associations as we move forward with implementation of these extensive reforms.

In August, the Wireline Competition Bureau (WCB) released the model support amounts offered to rate-of-return carriers. Carriers have until November 1 to indicate, on a state-by-state basis, whether they elect to receive model-based support. These amounts were announced by a Public Notice posted on the Commission's website and were accompanied by a spreadsheet detailing the offer, as well as a map and a list of census blocks showing areas that would be funded by carriers accepting the offer. At the same time, WCB is moving forward with implementation of the changes to the legacy system for carriers that do not elect to receive model-based support, and will be releasing information regarding the individual steps of that reform as it becomes available. As we move closer to the November 1 date for model election, and as we progress with implementation of the reforms to the legacy support system, we will ensure that information is being communicated clearly to all of the affected parties.

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?**

Response: In August, the Commission released a Declaratory Ruling granting substantial relief to Edison Electric Institute and American Gas Association. The Commission clarified that utility companies may make robocalls and send automated texts to their customers concerning matters closely related to the utility service, such as a service outage or warning about potential service interruptions due to severe weather conditions, because their customers provided consent to receive these calls and texts when they gave their phone numbers to the utility company. Robocalls and automated text messages that relate to an emergency, such as a power outage, do not require prior

express consent under the TCPA and the Commission's rules. Utilities may, and should, alert their customers to emergencies without concern about TCPA liability.

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?**

Response: First, I'd like to note that the reform being considered is focused on areas served by incumbent LECs regulated pursuant to price cap regulation. For areas served by incumbent LECs regulated pursuant to price cap regulation, the goal is to encourage competition and network investment and limit price competition to those circumstances that warrant it. As we work to achieve these important goals, we take into careful consideration the impacts various forms of regulation would have in the markets that utilize BDS, and we also pay particular attention to impacts any potential regulations may have in rural areas.

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?**

Response: To the extent that other laws or existing consumer protection tools are impacted by the Commission's final rules, I can assure you that staff is considering these implications and will include measures in our final rules to address any potentially negative 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?**

Response: I share your interest in ensuring that the Commission's final rules in this proceeding are based on facts and solid analysis. In the Business Data Services (BDS) FNPRM, the Commission emphasized that it sees cable entry into the marketplace as a very positive development and an important factor to be considered in any final rules. The cable companies were among the BDS providers required to submit their 2013 BDS data to the Commission. However, as the Commission noted in the BDS FNPRM, not all cable operators initially provided a full data set. Commission staff has since worked with

these cable providers to supplement their data submissions with the missing information and made the data available to commenters on June 6, 2016.

Professor Marc Rysman of Boston University, who had prepared a white paper examining the nature of competition and marketplace practices in the supply of BDS services that was included as an attachment to the BDS FNPRM, evaluated the impact of this supplemented data on his analysis. The presence of cable facilities that could be used to provide low-bandwidth (10 Mbps or lower) BDS over shared Hybrid Fiber Coaxial (HFC) facilities was only one of many factors that Dr. Rysman reviewed. Commission staff also conducted econometric regressions, using the supplemented cable data to test whether the presence of such low bandwidth BDS services may have additional or complementary effects on the prices charged by incumbents. Both Dr. Rysman's revised paper and the Commission staff's analysis were forwarded to peer reviewers for comment and made publicly available, as were the peer reviewers' further responses.

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?**

Response: The FCC has a long history of protecting the privacy of consumers of communications services. The broadband privacy Notice of Proposed Rulemaking (NPRM) sought comment on how best to ensure that the privacy protections that exist today will also apply in a competitive market. The NPRM also sought comment on appropriate enforcement mechanisms.

Based on the rich record we developed in response to the NPRM, including input from the Federal Trade Commission, the Order on circulation would employ an apps-based approach that would preserve the privacy protections that exist today no matter what device is used. This apps-based approach incorporates a number of important features of the HTML5 apps-based approach with respect to protecting the privacy of pay-TV consumers.

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?**

Response: The Business Data Services (BDS) Further Notice of Proposed Rulemaking (FNPRM) seeks broad public comment on reforming and modernizing the rules for this important market. It is important to note that the reform being considered is focused on areas served by incumbent LECs regulated pursuant to price cap regulation. For areas served by incumbent LECs regulated pursuant to price cap regulation, the goal is to encourage competition and network investment and limit price competition to those circumstances that warrant it. As we work to achieve these important goals, we take into careful consideration the impacts various forms of regulation would have in the markets that utilize BDS, and we also pay particular attention to impacts any potential regulations may have 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?**

Response: Business data services are critical in the day-to-day life of consumers, business, and industry, and are integral to the competitiveness of the U.S. economy as a whole in the information age. My goal is to maximize the benefits of business data services for U.S. consumers and businesses, including those in rural areas. I fully agree that maintaining incentives to invest—both by BDS providers and by their customers—is paramount. Let me assure you that we will take the views of all stakeholders into consideration as we work to complete BDS reform in 2016.

Attachment 2—Member Requests for the Record

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.**

Response: We take very seriously any interference complaint that alleges a negative impact on public safety. As you note, we have a strong track record of responding promptly. But a substantial amount of work usually is required before we would consider a case to be closed. For example, even after we have identified the source of the interference and taken steps to stop or abate the interference, we might continue to monitor the situation if subsequent harmful interference is reasonably likely to recur. Thus interference might be resolved long before a case is closed, and we do not track the intermediate step of "resolution" of the interference.

Further, the resolution of any specific interference complaint depends on a variety of technical and nontechnical factors, including the spectrum impacted, the equipment involved, the severity of the interference, and the amount and quality of information provided by the complainant. Thus, the timeframe to resolve interference complaints varies—some complaints are resolved in a phone call, while others may require weeks of painstaking work by teams of agents. Accordingly, the time needed to resolve an interference complaint is only one of several factors relevant to assessing the Bureau's productivity.

Finally, we are committed to ensuring the field office closures do not impede our responsiveness to interference complaints related to public safety. We note that, at this time, we haven't closed any field offices, although we are in the process of complying with the Commission's order to do so.