

Attachment—Additional Questions for the Record
Subcommittee on Communications and Technology
Hearing on
“Accountability and Oversight of the Federal Communications Commission”
May 15, 2019

The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Anna G. Eshoo (D-CA)

- 1. During the worst fire in California’s history, Verizon throttled the data speeds of Santa Clara County firefighters, hindering their ability to communicate.**
 - a. If the 2015 Open Internet Order wasn’t repealed, could this practice have been considered a violation of the ban on “unjust and unreasonable” business practices?**

Response: The 2015 Open Internet Order adopted rules that prohibited throttling of mobile internet traffic. That order did not make blanket findings about mobile service plans that offer a certain amount of data at a higher speed and then offer additional data at speeds that are typically significantly lower. Instead, the order determined that the Commission would address concerns related to these types of plans under the “no-unreasonable interference/disadvantage” rules adopted in the order on a case-by-case basis. The Commission could also review the data plans used by the Santa Clara County firefighters under the “transparency” rules adopted in the order to determine if the “data caps” associated with the plans, and the consequences of exceeding those caps, were adequately disclosed. Any failure to meet the requirements of the “no-unreasonable interference/disadvantage” or the “transparency” rules adopted in the 2015 order would have resulted in violations of the order’s ban on unjust and unreasonable business practices.

- b. Has the FCC taken any actions to avoid a repeat of this issue in California and other parts of the country by Verizon or other ISPs?**

Response: The FCC repealed the 2015 Open Internet Order that contained the “no-unreasonable interference/disadvantage” and the “transparency” requirements. To my knowledge it has not taken any action to replace them and has not taken any other actions to avoid a repeat of this issue in California and other parts of the country by Verizon or by other ISPs.

2. Under the 2015 Open Internet Order, the FCC could investigate possible violations of bright-line prohibitions of net neutrality and other “unjust and unreasonable practices.”

- a. Since the 2017 Restoring Internet Freedom Order, has the FCC been investigating whether ISPs are engaging in blocking, throttling, or paid prioritization practices, both as disclosed by ISPs and undisclosed practices?**

Response: The Chairman of the FCC directs the work of the FCC’s Enforcement Bureau. Consequently, I do not have full visibility into the Bureau’s investigative work. However, I am not aware of any Commission order or actions issued since 2017 related to investigations of whether ISPs are engaging in disclosed or undisclosed blocking, throttling, or paid prioritization practices.

- b. If not, would the FCC even know if “Over the past year, the Internet has remained free and open,” as Chairman Pai stated on January 2, 2019?**

Response: Unlike the rules put in place by the 2015 Open Internet Order, under the 2017 Restoring Internet Freedom order, ISPs are permitted to block or throttle lawful internet traffic and to engage in paid prioritization. They may do so if they disclose the terms of their intended blocking, throttling, and paid prioritization. Under the 2017 order, ISPs are permitted to disclose their blocking, throttling, and paid prioritization practices either on a publicly available, easily accessible website or by transmitting them to the Commission who, in turn, will make them available on a publicly available, easily accessible website.

In order for the Commission to ensure that no ISP is violating disclosed terms, it would have to constantly monitor ISP websites to see if ISPs have made any new disclosures or changed any existing disclosures. While the Chairman of the FCC directs the work of the Commission’s Enforcement Bureau, I am not aware of efforts to engage in the monitoring that would be necessary to ensure ISP compliance with disclosed terms of intended blocking, throttling, or paid prioritization.

3. The National Verifier has launched in 16 states where it lacks access to any databases for state-administered programs, such as the Supplemental Nutrition Assistance Program and Medicaid. Should an individual be informed that the National Verifier was not able to confirm their eligibility, they could reasonably consider this a denial from Lifeline, even though they may be eligible.

- a. Given these issues, what specifically is the FCC or USAC doing to ensure the National Verifier connects with state databases in the states where it has launched or where it is planning to launch, and what is the timeline to do so?**

Response: I am very concerned about the Lifeline National Verifier launching in a state before it is electronically connected to state-administered eligibility databases. My concerns stem from

the high rates at which applicants fail to be verified when manual verification processes are used. However, the Chairman of the FCC directs the work of the bureaus in all areas, including on the Lifeline program's National Verifier process. Accordingly, I do not have full visibility into work that the FCC's bureaus are doing to ensure that the National Verifier is connected to state databases in states where it has launched.

b. Given the above issues regarding the rollout of National Verifier, why is the FCC pushing forward to launch in more states rather than focusing on improving connections to federal and state databases in states where National Verifier is currently deployed?

Response: Please see response 3(a). I remain very concerned about the Lifeline National Verifier operating in a state without being electronically connected to state-administered eligibility databases. My concerns stem from the high rates at which applicants fail to be verified when manual verification processes are used. I do not have visibility into the FCC Chairman's reasoning for pushing forward to launch the Lifeline National Verifier in more states rather than focusing on improving connections to federal and state databases in states where the National Verifier is currently deployed.

4. As the FCC considers USTelecom's petition for forbearance from key provisions of the Telecommunications Act of 1996, what has the FCC done to consider the impact of granting this petition on (i) small and medium-sized ISP's building out the fiber networks needed for upgrading our country's wireless infrastructure to 5G and for closing the digital divide; and (ii) federal, state, local, and tribal government agencies, particularly those that will continue to rely on TDM-based telephone services through the continued availability of resale requirements?

Response: I know from reviewing the public record in the proceeding where the FCC is considering USTelecom's forbearance petition that considerable information and comment has been filed about small- and medium-sized ISPs and their continued ability to build fiber networks if the petition is granted. And, I have reviewed record submissions by federal, state, local, and Tribal government agencies regarding reliance on TDM-based telephone services. Also, advocates representing these stakeholder groups have held meetings with the Chairman's office staff. However, the Chairman directs the work of the Commission's bureaus. Accordingly, I do not have full visibility into what the bureaus have done to consider the impact of granting USTelecom's petition on small- and medium-sized ISPs building out the fiber networks needed for upgrading our country's wireless infrastructure to 5G and for closing the digital divide; or on federal, state, local, and tribal government agencies that will continue to rely on TDM-based telephone services through the continued availability of resale requirement.

I'll note that a draft order proposing to address portions of USTelecom's forbearance petition that was recently made public would grant forbearance for approximately 11,000 locations where a competitive provider has fiber optic cable located within one half of a mile, thereby removing

competitor's regulatory right to access communications infrastructure. The draft order did not address USTelecom's requests related to resale.

5. Should the FCC further eliminate media ownership rules as it is considering, Americans may experience a sharp reduction in the breadth and diversity of voices available in any local media market. One entity could control all broadcast TV stations, local newspapers, and radio stations. This is a direct rebuke to a fundamental value that underpins our democracy. Please share whether you are considering such outcomes and to what degree you have concerns about the consolidation of media ownership.

a. Has the FCC's newly created Office of Economic Analysis provided input on the impact of eliminating media ownership rules on consumer prices in the video marketplace?

Response: I will approach the current Quadrennial Review of our media ownership rules with the Commission's public interest standard in mind – with an eye towards promoting competition, localism, and diversity. Those will be my touchstones. I agree that promoting a diversity of voices in public discourse is fundamental to our democracy and, in particular, I feel strongly that the Commission must do more to ensure that ownership of and employment at our media outlets is reflective of the rich diversity of our population. I will closely review the record that we are currently developing.

The Chairman of the FCC directs the work of the Commission's bureaus and offices and I do not have full visibility into the work of the Office of Economics and Analytics. Accordingly, I am not personally aware of any analysis from OEA on the impact of eliminating media ownership rules on consumer prices in the video marketplace.

6. The FCC is considering a proposal to alter what may be considered toward the statutory maximum of five percent franchise fees (MB Docket No. 05-311). This would negatively impact the access of communities to public, educational, and governmental (PEG) programming. As I stated in my February 22, 2019 letter to the FCC, Congress clearly intended for communities to have access to PEG. The legislative history of the 1984 Cable Act explicitly states that franchise fees are only made up of monetary payments and do not include PEG contributions (H.R. Rep. No. 98-934 (1984)). Congress made its intent on this matter explicit and clear.

a. Under what statutory authority is the FCC considering this proposal which would have the effect of including PEG contributions in franchise fees?

Response: Since I've been a Commissioner, I've had the opportunity to hear from PEG operators from across the country about the valuable service that they offer in so many communities. They are often the only outlets covering local government meetings. These outlets introduce transparency to local government and increase civic engagement, which makes

the government more responsive and helps prevent waste or corruption. Sometimes, they are called upon to inform the communities during emergencies or natural disasters. And, above all, they are defined by localism, and uplift voices that aren't heard anywhere else. Cable rules enforced by the FCC or local franchising authorities have created a platform for small, local voices to serve local communities.

As you are aware, a Notice of Proposed Rulemaking on this topic was released in September 2018. This NPRM predated my term as a Commissioner. Upon review of the item, the Commission has proposed to interpret various provisions of Title VI of the Communications Act, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as the statutory authority needed to change the way franchise fees are calculated. As you note, this accounting of franchise fees is used to determine whether a local franchising authority has exceeded the statutory cap on such fees.

Attachment—Additional Questions for the Record

The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Yvette D. Clarke (D-NY)

1. **It is wonderful to see how technology has broken down barriers for people with disabilities, but I am concerned this same technology can introduce new challenges for consumers. As the FCC considers moving to fully Automated Speech Recognition or ASR, I am concerned that fully automated ASR might not work as well for certain types of accents or voices. This could become a serious problem as we move towards widespread adoption of such services. Certain consumers might be left behind.**

a. Do you have thoughts on this issue?

Response: I believe we must ensure that all Americans have access to our communications networks, and that includes Americans with hearing loss. Congress recognized as much when it passed the ADA and required the FCC to ensure everyone receives the full benefits of our phone network. In considering issues like this, we need to ensure that technology is seeking to close gaps and level the playing field, and not leaving folks behind. For many, automated speech recognition is life changing. It is cost-effective, easy to use, and lets folks talk on the phone in their own voice. But we must ensure that the quality of service is comparable to a live human being. We need to follow the science, and make our decisions based on solid studies and good data. We need to ensure that these services work for everybody before deploying them widely.

b. What are the risks of technologies that don't recognize certain accents or patterns of speech?

Response: Unfortunately, often and for various reasons, technologies using algorithms tend to perform worse when it comes to vulnerable communities, such as people of color or those with speech-related challenges. We've seen time and again that advances in technology that move towards biometric data, like facial or voice recognition, may not fully account for folks that aren't captured by assumptions made in the algorithm. The consequences range from deploying services that are simply not useful to those who need them to advancing services that can actively harm users.

c. Do you think we need more study on this issue?

Response: We need to make sure that technology is closing gaps and leveling the playing field, and not leaving folks behind. In this instance, and other similar instances, we certainly need to study these issues before flawed or faulty technology is deployed.

- 2. In considering the UST petition, does the Commission have the flexibility to take into account disparate market conditions or is it required to simply approve the petition as filed? Does the Commission have the flexibility to consider the impact of a natural disaster in a local market, such as Hurricane Maria in Puerto Rico, and how the local market conditions were and still are being impacted post-hurricane?**

Response: The Commission has the flexibility to take disparate market conditions into account. The Commission has, on many occasions, considered specific market conditions to determine whether to grant a request for forbearance in a certain area or not.

- 3. Will the Commission take into account the special circumstances of how Hurricane Maria devastated the local telecom infrastructure, as well as the local economy, into its consideration of the UST petition and whether such deregulation should occur at this time in Puerto Rico?**

Response: The Chairman of the FCC directs the work of bureau staff and determines what policy decision to propose in draft orders circulated to Commissioners for our consideration. However, I believe that the Commission should take into account the special circumstances of how Hurricane Maria devastated the local telecom infrastructure, as well as the local economy, as it considers the USTelecom petition.

- 4. The Telecommunications Act of 1996 did not preempt local regulatory bodies from the Commission's evaluation of whether a market was competitive or not and thus warranted certain regulatory relief.**
 - a. Will you give deference to the input from the local jurisdictions as to whether the local market conditions warrant deregulation at this time, particularly in the case Puerto Rico where the recovery efforts are still ongoing?**

Response: The Chairman of the FCC directs the work of bureau staff and determines what policy decision to propose in draft orders circulated to Commissioners for our consideration. However, I believe that the Commission should give serious consideration to the expertise offered by local jurisdictions as to whether the local market conditions warrant deregulation in Puerto Rico as it determines whether the telecommunications markets in Puerto Rico meet the statutory forbearance test.

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The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Tony Cárdenas (D-CA)

- 1. In 2004, 2011, and 2016, the Third Circuit instructed the Commission to perform the relevant analysis necessary to conduct a thorough and informed review of its ownership diversity policies and the impact from changes thereto. Yet still the Commission has failed to study the impact of its rules on ownership by women and people of color, and now in the quadrennial review NPRM proposes possible further relaxation of its rules without such analysis, flagrantly disregarding the Court’s explicit mandate.**

- a. Why has the commission still failed to undertake the required research?**

Response: I am keenly aware of the fact that, over the course of the past 15 years, the Commission has routinely been reprimanded by the Third Circuit for not collecting the data and performing the analysis required to fully consider the impact of its deregulatory rule changes on ownership diversity. Earlier this month, the Commission was before the Third Circuit yet again to defend actions taken to loosen ownership restrictions. At oral argument, one judge questioned why the Commission believes that collecting data is so difficult and another exclaimed: “If we were to affirm, I can just see the blurb: ‘3rd Circuit flunks Stats 101.’” It would be my preference that we get it right this time but, as there are no significant research efforts underway that I am aware of, we have a very long way to go. I think we need to do much more.

- 2. It sounds to me like everyone is aligned on the need to improve the Commission’s broadband data collection and mapping methods. Form 477 asks ISPs if they “could” provide coverage in addition to asking if they actually do.**

- a. What is the value behind asking what areas “could” be served within the normal course of business?**

Response: I do not see the value in asking ISPs to report what areas they “could” serve. To me, this is the wrong question and is an example of a policy that the FCC needs to change in order to gather data needed to produce accurate maps of where broadband is and is not available in the U.S. Allowing ISPs to report areas where they “could” serve results in data that contains an indistinguishable jumble of areas where service is actually and hypothetically available. This mixture impacts the reliability of any map purporting to show where broadband service is actually available.

Attachment—Additional Questions for the Record

The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Darren Soto (D-FL)

- 1. Late last year, the FCC initiated a proceeding looking at how to mitigate space debris. While I think it is a positive step to consider how to address this problem, the Commission may not have the technical expertise or the resources necessary to develop or enforce the complicated regulations it is considering proposing. Further, I understand the FCC has requested a reduced budget for these activities in FY20.**
 - a. Do you agree that it is important to ensure that any orbital debris mitigation regime be straightforward and enforceable?**

Response: Yes. As an enforcement official at both the Justice Department and the FCC, I have seen firsthand that both stakeholders and enforcement officials must have a clear understanding of our rules before we can consider enforcement, regardless of the subject area.

- b. Please provide me with the number of employees supporting this project in total and the number of employees on this project with undergraduate or graduate degrees in relevant technical fields, specifically: aerospace, aeronautical, and/or astronautical engineering. Given the reduced budget you are requesting for FY20, is the FCC able to hire additional technical experts with degrees in these fields?**

Response: Although the Chairman is responsible for the FCC's budget, as well as setting priorities for hiring, I believe that the agency must have sufficient qualified personnel to perform its statutory duties.

- 2. What is the FCC currently doing to ensure that minority programmers are being included by providers; especially in Metropolitan Statistical Areas (MSA) with large minority communities that are currently being underserved?**

Response: I have already met with a number of diverse programmers during my time on the Commission, and I understand the difficulty they sometimes have with securing carriage of their channels on cable or satellite systems and the impact this may have on underserved audiences. I haven't yet been asked to consider an item addressing this issue, but look forward to working with stakeholders to ensure that there is robust competition, diversity, and innovation in the video marketplace.

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The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Robert E. Latta (R-OH)

- 1. My concern is about how we deliver broadband to all Americans, especially unserved and underserved Rural America. One technology will not be the panacea for this challenge, but we will need a combination of solutions. Can you comment on what role you see spectrum playing in rural America and discuss if you think spectrum sharing is a feasible part of that solution?**

Response: The FCC needs to use every tool in its toolkit to bring broadband to rural America, and spectrum sharing is part of the solution. Unlicensed spectrum could be particularly helpful towards addressing rural America's broadband needs but making that spectrum available without causing harmful interference to incumbent users presents a significant challenge. The Commission's work with the Department of Defense in the 3.5 GHz band, however, demonstrates that sophisticated spectrum sharing approaches are workable even when the most critical communications are at stake. I'm particularly interested in DoD's experiments using artificial intelligence tools to manage spectrum efficiently. Spectrum is a finite resource – we need to explore creative ways to use it while protecting incumbent users.

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The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Greg Walden (R-OR)

- 1. Would you support the Chairman's effort to move forward in evaluating appropriate allocation of the 5.9 GHz band at this time? Why or why not?**

Response: I fully support any initiative to maximize the efficient use of the 5.9 GHz band. Twenty years ago, the 5.9 GHz band was allocated for Direct Short-Range Communications between vehicles and infrastructure. That spectrum remains stuck in limbo. I agree that we need to take a fresh look at the band and make a timely decision. I understand that the Department of Transportation is testing the shared use of the band. I look forward to seeing the results so we can resolve any remaining issues in coordination with DOT and we can move forward as quickly as practicable. Whatever solution we ultimately reach needs to balance our need for unlicensed spectrum with our need for next-generation auto safety.

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The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable John Shimkus (R-IL)

- 1. Under the FCC’s oversight, the Universal Service Administrative Company (USA) has worked to establish a “National Verifier” system to combat fraud in the Lifeline program by ensuring all applicants are eligible for Lifeline benefits. It is my understanding USAC is actively transitioning many states from “soft-launch” status, in which participation in the National Verifier system is voluntary, to a mandatory verification system. I want to ensure that we expeditiously continue this transition to a more secure and accurate verification system. Please describe how the FCC, working with USAC, will continue the push for implementation of a robust mandatory National Verifier system.**

Response: I am very concerned about the Lifeline National Verifier hard launching, or becoming mandatory, in a state before the National Verifier establishes electronic connections to databases used to determine Lifeline eligibility in that state. My concerns stem from the high rates at which applicants fail to be verified when manual verification processes are used, as compared to much lower rates of failure in states with electronic connections between the National Verifier and state databases. However, the Chairman of the FCC directs the work of the bureaus in all areas, including on the Lifeline National Verifier process. Accordingly, I do not have full visibility into whether or how the FCC will work toward implementation of a robust mandatory national verifier system.

Attachment—Additional Questions for the Record

The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

The Honorable Susan W. Brooks (R-IN)

- 1. I firmly believe that letting the private sector compete is the best way to ensure the U.S. will be the world leader in 5G technology. Can you address criticisms of that idea and the notion that the U.S. should nationalize a wholesale 5G network to somehow ensure its leadership in this space?**

Response: While I believe that the public sector can play an important role in ensuring that the benefits of broadband and 5G service reach every American, I do not believe that we need a nationalized wholesale 5G network to achieve this goal. In my view, rather than debating such abstractions, we should focus on identifying solutions that will allow the technological benefits of next-generation networks to reach everyone, everywhere in this country.