

Attachment—Additional Questions for the Record

**Subcommittee on Communications and Technology
Hearing on
“Oversight of the FCC”
September 17, 2020**

**The Honorable Ajit V. Pai, Chairman
Federal Communications Commission**

The Honorable Anna Eshoo (D-CA):

1. Political files submitted to the Federal Communications Commission (FCC) play an important role in ensuring the public knows how candidates, outside groups, and others are using the public’s airwaves for television and radio during an election. Unfortunately, the millions of documents the FCC manages are not machine readable, making meaningful analysis nearly impossible. Would you support a requirement for political files to be submitted to the FCC in a machine-readable format?
 - a. Has the FCC considered requiring political files be machine-readable?
 - b. If not, why not?

RESPONSE: When the Commission first created the online public file system, it did not require files to be machine readable in order to minimize the burdens on broadcasters and provide stations some flexibility with respect to format of their filings. Notably, our career staff have found the system allows meaningful analysis of the filings. The online public file has made these records instantly accessible to the public for the first time, and the Commission staff has worked to improve the search functions within the system, including the introduction of filters that can help to narrow search results for consumers. We continue to look for ways to improve the system over time.

2. The FCC’s 2020 Broadband Deployment Report finds that “the current speed benchmark of 25/3 Mbps remains an appropriate measure by which to assess whether a fixed service is providing advanced telecommunications capability,” specifically citing the statutory definition of “advanced telecommunications capability” as services that “enable[] users to originate and receive high-quality voice, data, graphics, and *video* telecommunications.” (¶13; 47 U.S.C. § 1302(d)(1) (emphasis added)). However, when I look at the recommended bandwidth for Zoom, Google Meet, and Cisco WebEx, each requires upload speeds of 3 Mbps for high quality video.

Given that millions of households are juggling with parents participating in video calls at the same time as students are participating in class via video conference, does this speed threshold make sense today? What do you think is an appropriate threshold?

RESPONSE: As the Commission noted in issuing the *2020 Broadband Deployment Report*, the record reflected “significant support for maintaining the current fixed 25/3 Mbps speed benchmark.” Nonetheless, the *Report* also examined deployment data for speeds at several speed thresholds, including three higher speeds (50/5 Mbps, 100/10 Mbps, and 250/25 Mbps). The Commission found year-over-year deployment increases at all speeds examined.

In August 2020, the Commission issued the *Sixteenth Broadband Deployment Report Notice of Inquiry* where it sought comment on the appropriate measure to assess whether fixed services provide advance telecommunications capability. The Commission will examine the record compiled in response to the *Notice of Inquiry* to determine whether a change in the benchmark is merited.

3. We often discuss the digital divide as if it’s only about access to broadband when we know our country also faces an affordability crisis. Yet the FCC doesn’t collect broadband pricing data.

Does the FCC have the legal authority to collect broadband pricing data? If so, why hasn’t it done so?

RESPONSE: The FCC does collect broadband pricing data each year through the Commission’s Urban Rate Survey, which collects information about the rates charged for broadband access to consumers in urban areas across the United States. Recent independent analysis of Urban Rate Survey data shows that the rates for the most widely purchased services have dropped by 20% since 2015.

Notably, the Urban Rate Survey is a significant undertaking for service providers and Commission staff. Respondents must submit information on the advertised speeds, usage allowances, the technology (e.g., fiber, cable, DSL), and prices for each broadband service in each designated census tract, producing thousands of unique pricing data points. Commission staff, in turn, must review, process, and analyze that data. In 2013, in the *Modernizing the FCC Form 477 Data Program Report and Order*, under the leadership of then-Chairwoman Clyburn, the Commission addressed the collection of deployment data, subscription data, and company identification and contact information through Form 477, but did not require the collection of broadband pricing data. Many commenters in that proceeding asserted that collecting such data would be extremely burdensome.

4. The FCC’s Second Report and Order and Third Further Notice of Proposed Rulemaking in “Establishing the Digital Opportunity Data Collection” does not propose collection of broadband availability data at community anchor institutions (i.e., healthcare facilities, schools, and libraries), except for a narrow question related to collection of data about services that are not mass-market services (§94). The House Report associated with *Broadband DATA Act* specifically states that the FCC should include “community anchor intuitions” in its mapping efforts (H. Rept. 116-350 at p. 14). Various entities also commented in the record for the proceeding that the FCC should collect data on community anchor institutions.

Given that the role of community anchor institutions has increased significantly since the start of the pandemic, why hasn't the FCC included community anchor institutions in its data collection proposal?

RESPONSE: In the *Digital Opportunity Data Collection Second Report and Order and Third Further Notice of Proposed Rulemaking*, the Commission did propose to collect information about the mass-market services deployed nationwide, including to community anchor institutions. And the Commission sought comment on going beyond the requirements of the Broadband DATA Act to collect information about non-mass-market services to community anchor institutions.

Given the ongoing pandemic, it is imperative that we initiate the Digital Opportunity Data Collection as soon as possible. Unfortunately, Congress has yet to provide the funding we need for implementing the necessary systems for collecting and processing providers' coverage data, developing the nationwide fabric of serviceable locations, or conducting the in-depth verification and challenge processes that will ensure the reliability of the maps. In fact, in the Broadband DATA Act, Congress actually took away from us the only source of funding that was available for this vital work by prohibiting the Universal Service Administrative Company from being involved in this project. The solution to this problem is obvious. As I've said repeatedly, and as we've warned since the fall of 2019, Congress must give us the resources we need to implement the Broadband DATA Act. Once we get the funding we need, we'll be able to do the hard work of producing broadband availability maps with unprecedented detail, which will boost our efforts to close the digital divide including to community anchor institutions.

5. What is the FCC's best estimate of the number of robocalls for the first six months of this year, compared to the prior year? How has the pandemic impacted this change?

RESPONSE: The Commission receives thousands of informal consumer complaints each year about unwanted calls, including robocalls; it is the Commission's top category of consumer complaints. The Commission received approximately 15,000 informal consumer complaints regarding robocalls from January 2020 through June 2020 as compared to approximately 30,000 received in 2019 over the same time period.

Third-party analytics companies also track unwanted robocalls. For example, YouMail analyzes call patterns and publish information about call volumes and trends. YouMail estimates American received 22.8 billion robocalls in the first six months of 2020, compared to over 29.3 billion in the same period for 2019. It is likely that the pandemic has caused a decrease in the total number of robocalls received in the first half of the year due to the fact that many overseas calling centers were shut down for a period of time due to the pandemic. Additionally, we expect that the Commission's decision to require default blocking to consumers will reduce the amount of robocalls getting through to consumers as the industry continues to implement the Commission's new STIR/SHAKEN rules.

However, there are also many new robocall scams circulating related to the pandemic. That's why in April, we partnered with the Federal Trade Commission, the U.S. Department of Justice, and USTelecom's Industry Traceback Group to tackle the threat of COVID-19 robocall scams. Specifically, the FCC's Enforcement Bureau and the FTC's

Bureau of Consumer Protection issued demand letters to three gateway providers that were facilitating the COVID-19 robocall scams originating overseas—and all three stopped bringing these calls into the United States within 48 hours. In May, when a new set of COVID-19 scam robocalls began coming through another set of gateway providers, we took action again, and they shut down the fraudulent traffic. We continue to work with our federal partners and industry to stop such calls, but in the meantime, the Consumer and Governmental Affairs Bureau developed a [COVID-19 scams webpage](#) to alert and educate consumers on these new efforts.

6. I'm pleased that the FCC has recently taken a number of actions to combat illegal robocalls. Has the FCC stepped back to quantify how these actions are expected to reduce the total number of illegal robocalls consumers receive?

RESPONSE: I appreciate your support for the work we have done to address our top consumer protection priority. The Commission's Consumer and Governmental Affairs Bureau released a staff report in June that provides detailed information regarding the Commission's efforts on call blocking and the impact those decisions have had on illegal robocalls received by consumers. The report also outlined the Commission's efforts to implement STIR/SHAKEN caller ID authentication which, once fully implemented, should also reduce the number of illegal robocalls to consumers. The staff report is available here: <https://docs.fcc.gov/public/attachments/DOC-365152A1.pdf>. My hope is that full implementation of SHAKEN/STIR, along with the other measures we've taken, will give consumers more peace of mind in the time to come.

7. As a Co-Chair of the bipartisan, bicameral NextGen 9-1-1 Caucus, I'm deeply aware of the vital role GPS plays in assisting first responders. It's why I was troubled to read that the Department of Transportation identified police, fire, and other emergency vehicles as potentially impacted by the deployment of Ligado's network.

How does the FCC's *Ligado Order* address the U.S. Department of Transportation's concerns? What measures has the FCC taken to ensure first responders, as well as consumers, will not be financially liable for any repair or upgrade costs, should their GPS equipment be impacted by Ligado's network?

RESPONSE: I agree that the Commission must ensure our police, firefighters, and other emergency personnel have access to the services they need to protect the public, including GPS. That's why the Commission's *Ligado Order* included strict conditions to ensure that GPS operations continue to be protected from harmful interference. These include a 99.3% reduction in power for downlink operations and a requirement that Ligado establish a 23-megahertz guard band using its own licensed spectrum. We also required Ligado to respond to credible reports of interference, including rapid shutdown of operations where warranted.

Since 2011, interested stakeholders have generally agreed that GPS receivers embedded in cellular devices are unlikely to be affected by Ligado's proposal. Tests demonstrated then that, even at the significantly higher power operations Ligado originally proposed, the deployment of the network would not cause harmful interference to Cellular phone GPS

operations. In fact, cellular providers have not suggested in this proceeding that their GPS functions would be impaired in any way by Ligado's operations.

What is more, test data show that Ligado's low power network will not cause harmful interference to general location and navigation GPS devices, including those used by public safety officers. The Commission noted agreements Ligado reached with several major GPS device manufacturers, including a major manufacturer in the general location and navigation GPS device market, indicating they did not object to Ligado's terrestrial network even at a power level that is approximately 160-times greater than the Commission approved. The testing data included in the record, together with Ligado's agreements with GPS device manufacturers and the conditions the Commission adopted as part of the Order and Authorization, work together to ensure that public safety services that rely upon GPS do not experience harmful interference as a result of Ligado's network deployment.

The Honorable A. Donald McEachin (D-VA):

1. Chairman Pai, I am interested in knowing the status of the Petition for Declaratory Ruling for proceedings CG 18-152, CG 02-278 (FCC ID [110141644656](#)).

My Energy and Commerce colleagues and I have worked diligently on a bipartisan basis this Congress to address the epidemic of unsolicited scam robocalls, including passing the TRACED Act into law. This legislation helped protect subscribers from receiving unwanted calls or texts, while also ensuring senders of opt-in communications could continue utilizing automated text and call services.

On November 1, 2019, the petition was filed asking the Commission to rule that a text message in response to a customer's opt-out request that seeks to clarify the scope of their request is in line with the Commission's 2012 declaratory ruling in *SoundBite Communications, Inc.*, and that such responses to opt-out requests would not constitute a violation of the TCPA.

On November 7, 2019, the Consumer and Governmental Affairs Bureau released a public notice (DA 19-1156) seeking comment on the petition. Every party that commented on said petition supported it including from the following consumer advocacy organizations: National Consumer Law Center, Consumer Action, Consumer Federation of America, Consumer Reports and the National Association of Consumer Advocates.

- a. To date, the petition has not been decided. Could you provide a status updates as to when you expect the Commission to rule on this petition?

RESPONSE: Consumer and Governmental Affairs Bureau staff is reviewing the record in response to the public notice and will take appropriate next steps.

The Honorable David Loebsack (D-IA):

1. In a bipartisan letter from members of the House Agriculture Committee, you were asked in the context of GPS, whether the FCC has defined what constitutes serious degradation to the functioning of a precision agriculture device or application. Your response dated September 11th offers an explanation for why the Commission rejected the 1 dB standard, but failed to acknowledge that the FCC’s decision found that some GPS receivers used in precision agriculture may be degraded by Ligado’s network.
 - a. Did the Commission determine what constitutes serious degradation to the functioning of a GPS receiver used for precision agriculture?
 - b. Will farmers be responsible for paying the repair or upgrade costs, when their GPS equipment is impacted by Ligado’s network?

RESPONSE: As noted in my September 11, 2020 letter, the Commission’s decision relied on its longstanding definition of “harmful interference” codified in the Commission’s rules. The Commission defines “harmful interference” as “[i]nterference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with [the ITU] Radio Regulations.” This is the same definition used by the National Telecommunications and Information Administration, as well as by the International Telecommunications Union. This definition, including the serious degradation component, does not change based upon the device or service under evaluation. The Commission’s definition of harmful interference is a well-known standard with which Commission licensees and equipment manufacturers are well-familiar.

As discussed in the letter, in the *Ligado Order* the Commission fully considered and addressed the concerns relating to high-precision GPS receivers. The information and data supplied in the record (including relevant testing data), demonstrated that high-precision receivers should not experience harmful interference as a result of Ligado’s terrestrial network when combined with relevant conditions the Commission adopted as part of the authorization.

In reaching its decision, the Commission used performance-based metrics associated with GPS receiver operations, such as the error introduced to the accuracy of either a two-dimensional (2D) or three-dimensional (3D) position solution (depending on the specific GPS application under consideration). The Commission also relied, in part, on agreements Ligado entered into with several major GPS device manufacturers—including manufacturers of high-precision receivers such as those used for agriculture (Deere, Novatel, Topcon, and Leica). One such manufacturer, Deere & Co., indicated that it did not object to Ligado’s terrestrial operations at significantly higher power levels more than 160 times greater than the Commission ultimately approved, provided that the Commission also approved certain conditions (e.g., advance notification of Ligado’s activation of base stations)—which the Commission did.

In light of the manufacturer agreements, the device testing in the record, and the conditions we adopted in the Order, we found that precision agriculture and other high-precision GPS receivers should be able to coexist with Ligado’s network operations in the adjacent spectrum. Based on the unlikelihood of harmful interference actually occurring—and, to

be clear, the concern here is caused by GPS receivers listening into Ligado's spectrum, not Ligado improperly transmitting in GPS spectrum—and the number of contingent decisions or actions that would need to occur as precipitating events, we are unable to speculate as to who might ultimately cover costs associated with the replacement of a particular high-precision receiver should harmful interference to the receiver actually occur and should Ligado (in cooperation with GPS device manufacturers and other stakeholders) fail to resolve the interference issue through alternative means.

2. Yes or no:

- a. Does the FCC's 5G FAST Plan, which proposes making hundreds of megahertz of spectrum available for 5G services, explicitly mention Ligado's L-Band spectrum?

RESPONSE: The FCC's 5G FAST Plan does not explicitly mention the L-band spectrum. The 5G FAST Plan "includes three key components: (1) pushing more spectrum into the marketplace; (2) updating infrastructure policy; and (3) modernizing outdated regulations." <https://www.fcc.gov/5G>. The Commission has cited examples of recent efforts to make additional high-, mid-, and low-band spectrum available for 5G services but any omission of reference(s) to L-band spectrum (or any other band, for that matter) should not be construed as inconsistent with the plan's overall objectives, just as the omission of "agriculture" within the exposition of numerous Congressional powers in Article I, Section 8 of the U.S. Constitution does not mean that Congress cannot legislate in that field.

- b. What percent of the total spectrum that the FCC has or will soon make available for 5G commercial operations, does Ligado's spectrum represent?

RESPONSE: The Commission has made approximately 5,562.5 megahertz of spectrum available recently for licensed, commercial operations (including 5G). Of this, high-band (i.e., millimeter-wave) spectrum accounts for 4,950 megahertz, 542.5 megahertz of this total is mid-band spectrum (including the L-band), and 70 megahertz is low-band, 600 MHz spectrum. While the spectrum Ligado proposes to use for 5G services represents a small percentage of the total amount of spectrum proposed or made available for mobile wireless services, its radio-frequency characteristics coupled with the unique Internet of Things (IoT) services that Ligado proposes to offer make the Ligado spectrum a unique, innovative, and valuable part of the 5G ecosystem.

- c. Is Ligado's spectrum internationally harmonized with other industrialized nations involved in deploying 5G networks?

RESPONSE: Yes. There is an international 3GPP standard band class for the L-band spectrum for terrestrial mobile service. And the *Ligado Order* references ongoing efforts in 3GPP to create an updated 5G band class for the 30 megahertz of Ligado spectrum.

The Honorable Greg Walden (R-OR):

1. The FCC's broadcast ownership regulations have long hampered traditional media outlets ability to compete with their digital counterparts that are completely unregulated. Before COVID-19, this type of outdated, asymmetrical regulation was simply a relic of a bygone era that four bipartisan Commissions have been unable to address. But now, these regulations—in addition to the business impacts of COVID-19—are threatening one of the strongest antidotes to the misinformation spreading online: investments in real journalism.

Since the Commission is still awaiting to see if the Supreme Court will overturn the activist Third Circuit Court's blockade of updating its regulations, are there waivers or other tools the Commission could use that advance investments in local news, preserve the public interest, and promote the benefits of a transaction while also guarding against concerns such as a potential lack of viewpoint diversity?

RESPONSE: Unfortunately, the Third Circuit's repeated blocking of meaningful broadcast ownership reforms limits the ability for the Commission to provide additional relief. But I am very pleased that the Supreme Court will review the latest Third Circuit decision. I hope the Court will affirm the Commission's reforms—which fulfill a mandate Congress gave us almost a quarter-century ago—so that the rules can better match marketplace realities and struggling local broadcast news outlets can have an opportunity to thrive.

An applicant or licensee may seek a waiver pursuant to section 1.3 of the Commission's rules. However, waivers are only granted in rare instances and upon a showing that the public interest would be served and that special circumstances warrant a waiver. Although a waiver may be appropriate in limited instances, broadcasters would best be served by reform of our outdated rules.

2. I recently introduced H.R. 8154, the Broadcast Diversity in Leadership Act, which would authorize an expanded broadcast incubator program to encourage more minorities to enter the broadcast ownership business. The bill sets out a very narrow waiver of ownership rules for an established broadcaster that meets rigorous requirements of the program and brings a new, diverse voice into the market. Some have raised concerns that this legislation would lead to consolidation despite the entry of new voices into the marketplace.

Does the FCC have authority to ensure that any such waivers are in the public interest and that the benefits of adding a new voice to a market outweigh any potential public interest impacts of a waiver of the ownership rule?

RESPONSE: Consistent with its general statutory authority to safeguard the public interest, if the Commission were to promulgate rules pursuant to this legislation, it could ensure that waivers under the program were found to be in the public interest.

The Honorable Bill Flores (R-FL):

1. Chairman Pai, as the result of the pandemic, Americans are relying on access to a broadband connection more than ever. A fast and reliable connection at home is vital for work, education, accessing telehealth services, and staying in touch with loved ones. I commend the Commission for its August decision to waive certain Lifeline program rules until December of this year. Would you walk us through how the waiver of these rules will help ensure Lifeline subscribers are able to stay connected?

RESPONSE: Under my leadership, the Commission has taken aggressive action to help ensure that consumers stay connected during this crisis. For example, as you note, beginning in March, the Commission waived several rules that could have otherwise resulted in the involuntary removal of subscribers from the Lifeline program during the pandemic. These de-enrollment rules are in place to ensure that Lifeline program dollars are directed toward qualifying low-income consumers. We found that it was in the public interest to waive these requirements for a limited period of time to ensure that no current Lifeline subscriber involuntarily loses service during this unprecedented, nationwide public health emergency. In light of the ongoing pandemic, Commission staff have extended these waivers until November 30, 2020.

We have also introduced flexibility into the enrollment process to facilitate access to Lifeline for those hardest hit by the impacts of COVID-19. In April, the Commission waived the requirement that consumers seeking to qualify for the program based on their income must provide at least three consecutive months of income documentation. This relief has made it easier for low-income Americans who recently lost their jobs as a result of the pandemic to enroll in the program. And in June, the Commission allowed Lifeline applicants residing in rural areas on Tribal lands to begin receiving Lifeline service even if their application failed an automated check and the applicant is still in the process of providing documentation to confirm their eligibility. Given the challenges that residents of rural Tribal areas face in submitting documentation, this relief has enabled service providers to begin quickly providing Lifeline service to these consumers while they complete their applications.

These changes continue to facilitate access to Lifeline for vulnerable Americans during this unprecedented, nationwide public health emergency. Commission staff will monitor the situation and determine whether any additional extensions beyond November 30, 2020 are needed.

2. Chairman Pai, thank you for your work to implement the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act). As you know, the TRACED Act requires the Commission to ensure that robocall blocking services include “transparency and effective redress options” for both consumers and callers.

These transparency and redress options are essential. Many calls are being indiscriminately blocked or labeled as spam without the callers’ knowledge or having any form of redress. The Commission has taken productive steps to help solve this situation for those who receive calls, implementing a single point of contact, a reasonable response time for disputes, and requiring that voice service providers promptly unblock erroneously

blocked numbers. However, the lack of proactive, transparent notification for those calling makes it difficult for the caller to know that a call has been blocked.

Will the Commission also consider both requiring voice service providers to give proactive notification of blocking, including the reasons why calls are blocked, as well as implementing an appeal process for erroneously blocked calls that includes objective criteria?

RESPONSE: In July, the Commission sought comment on whether to expand current redress requirements with regards to call blocking, including whether callers should be notified within a certain timeframe when calls are blocked and whether providers should be required to resolve disputes within a certain timeframe. Additionally, we sought comment on whether it was necessary to address the mislabeling of calls, and if so, how to do so. Comment periods closed on September 29, 2020, and staff is reviewing the record in developing recommendations for the Commission's consideration.

3. Chairman Pai, I was hoping to get an update regarding the number of outstanding Telephone Consumer Protection Act (TCPA) petitions currently pending before the Commission. According to Kelley Drye's Communications Practice Group's TCPA tracker, there are at least 32 TCPA related petitions waiting for a decision by the FCC.

These petitions cover a wide array of industries and issues including text messages related to COVID. When can we expect the FCC to act and make a final decision on some of these petitions?

Specifically, I would like an update on the following petition:

On November 1, 2019, Capital One filed a Petition for Declaratory Ruling asking the Commission to rule that a text message in response to a customer's opt-out request that seeks to clarify the scope of their request is in line with the Commission's 2012 declaratory ruling in SoundBite Communications, Inc., meaning that such responses to opt-out requests would not constitute a violation of the TCPA.

On November 7, 2019, the Consumer and Governmental Affairs Bureau released a public notice (DA 19-1156) seeking comment on the petition. Every party that commented on Capital One's petition supported it including from the following consumer advocacy organizations: National Consumer Law Center, Consumer Action, Consumer Federation of America, Consumer Reports and the National Association of Consumer Advocates.

To date, the petitioner still hasn't received a final ruling on their petition. Can you please provide insight into when we may have a final determination on Capital One's petition?

RESPONSE: You are right that the Commission has a large backlog of TCPA petitions, and I am pleased that staff are making their way through them. For example, in September, the Consumer and Governmental Affairs Bureau granted a petition from Joseph T. Ryerson & Sons (DA-20-1038) finding that the petitioners' situation was sufficiently similar to the *2019 Amerifactors Declaratory Ruling* (DA-19-1247), which determined that the TCPA did not apply to faxes sent via an online service that effectively receives faxes as email sent over the Internet. The Bureau also granted a petition from Akin Gump (DA-20-1116) that clarifies that a fax broadcaster is solely liable for TCPA violations when it engages in deception or fraud against the advertiser.

Regarding the Capitol One petition, Consumer and Governmental Affairs Bureau staff is reviewing the record in response to the public notice and will take appropriate next steps.