

Attachment—Additional Questions for the Record

**Subcommittee on Communications and Technology
Hearing on
“Connecting America: Oversight of the FCC”
March 31, 2022**

The Honorable Nathan Simington, Commissioner, Federal Communications Commission

The Honorable Cathy McMorris Rodgers (R-WA)

1. This Committee has a longstanding interest in streamlining the process of deploying broadband infrastructure as a means to increase access to fast and affordable Internet service. For its part, the FCC deserves credit for making progress on this front also over recent years. But more work remains to be done—particularly on Federal lands—to modernize our nation’s siting rules. This is particularly important given the recent, massive influx of funding that will spur new builds across the country.

- a. Do you support further streamlining of our broadband infrastructure rules?

RESPONSE: Yes, I support all streamlining efforts of Commission infrastructure rules.

- b. What is the FCC doing currently in support of this goal?

RESPONSE: The Commission is working closely with the NTIA and states to ensure that all of the FCC’s resources are made available to relevant stakeholders for IIA implementation. The Commission recently signed a memorandum of understanding with NTIA regarding data sharing for these purposes, and shared its tower construction notification system with the Department of Commerce. Chairwoman Rosenworcel shared that she is primarily concerned that the NTIA place a premium on the projects that are streamlined and can be implemented the fastest.

In March of 2022, the Commission adopted a Further Notice of Proposed Rulemaking that seeks comment on whether our pole attachment and replacement rules need further reform. The Further Notice focuses primarily on the proper allocation of costs between pole owners and attachers, such as when a pole must be replaced. But at least as important as allocating these costs fairly is fostering certainty about who is responsible for paying. Disputes about pole attachments can hold up the deployment of broadband to new areas, and perfect justice for pole owners and attachers does little to help consumers whose access to broadband is held up by such disputes. So while we should strive for fairness, our highest calling in this area is ensuring that all parties have clear legal rights, and

access to quick dispute resolution, so they can get on with the work of making high speed internet available to more Americans.

- c. Are there additional policies that you support that would further modernize/streamline broadband builds across the US?

RESPONSE: I fully support all of the goals aimed at by the 2021 Boosting Broadband Connectivity Agenda, which you and subcommittee Chairman Latta introduced, including streamlining permitting processes, facilitating broadband deployment on federal lands, and closing the digital divide in both rural and urban areas.

I also support efforts to study the Commission's infrastructure rules and procedures for ways to further streamline them for more rapid broadband deployment.

The Honorable Steve Scalise (R-LA)

1. As you may know, since coming to Congress, I have led efforts to modernize our nation's outdated video laws. My goal has been to ensure that everyone in the marketplace gets paid for their products and consumers have more freedom to choose what programming they want to pay for.
 - a. Can you describe the extent to which streaming services that wish to offer local stations have been able to do so without retransmission consent?

RESPONSE: Over-the-top linear video providers like YouTube TV and Hulu Live negotiate with network programmers, not local affiliates, for retransmission rights. Network programmers now include, in agreements with affiliates, the right to retransmit their local content on over-the-top platforms. Network programmers pay affiliates whatever they are obligated by their affiliate agreements to pay, or otherwise pay whatever they deem to be fair. Network affiliates simply are not involved in negotiation with over-the-top linear video providers for their carriage of their local content.

- b. Has the lack of retransmission consent agreements between broadcasters and streaming services created distortions in the marketplace?

RESPONSE: Yes. We have two sets of rules: one for traditional multichannel video programming distributors (MVPDs), like cable and satellite systems, and one for over-the-top linear video providers. In a recent case, Disney, which owns ABC, ESPN, and Hulu, withheld ABC and ESPN content from roughly 4 million YouTube TV customers for several days. Neither Google nor Disney had an obligation to negotiate in good faith, as our rules require broadcast affiliates and traditional MVPDs to do. The American consumer was left in the lurch. There is no reason to suspect, as every network programmer spins up its own OTT video service, that the contract disputes responsible for the de-listing and re-listing of content from every OTT on-demand video provider will not continue to spill over into OTT linear video.

2. In your view, does the lack of regulation for streaming services correlate with the innovation and popularity of these services? If so, please explain why?

RESPONSE: It is possible, but a two-tiered system of regulation is untenable. I would observe that the two most popular OTT linear video providers charge \$65 or \$70 per month for content available on less expensive traditional MVPD packages. Having fewer facilities to pay for to transmit this video, and benefitting from lower prices for carriage of local content negotiated directly with network programmers, presumably OTT linear video providers are operating at higher margins than traditional MVPDs. If there is some special innovation appurtenant to those higher margins, I have yet to see it. I suppose there is probably machine learning driven content recommendation on these platforms, but delivery of OTT linear video is not at the core of technological innovation for edge providers.

3. In light of your consideration of question 2, what steps can and should the Commission take to reform the video marketplace in a manner that allows all services (including streaming, cable, and satellite) to compete on a level playing field?

RESPONSE: We should refresh the record in the 2014 proceeding dealing with whether OTT linear video providers should be treated as MVPDs for the purpose of retransmission consent. If there is a fundamental reason to extend this two-tiered regulatory system into the future, the beneficiaries of this system are free to make the case in the record. What is clear is that the market has significantly changed since the topic was treated in 2014, and a refresh of the record is warranted.

We can also institute changes in broadcast ownership rules that reflect the fact that the largest independent broadcast groups trade at rounding errors of their big tech rivals. In small markets, broadcasters struggle to achieve the scale necessary to maintain profitable operations, and without those broadcasters, the big tech platforms that use—often without compensation—that same content to drive their own ad revenue growth will find themselves bandits in an empty bank.

4. In light of your consideration of question 2, what steps can Congress take to reform the video marketplace to better reflect the competition in the marketplace today?

RESPONSE: About 80% of all internet traffic is over-the-top streaming video. The most effective thing that Congress can do, then, to create a level playing field for the video marketplace is adding a Computer Title to the Communications Act to bring these providers within the full scope of Commission authority.

Failing that, however, Congress should expand the USF contribution base to reflect that the principal beneficiaries of expanded network access besides the American consumer—streaming video platforms and edge providers generally—begin to pay their fair share into the construction and maintenance of the very facilities that make their success possible. That expansion would bring manifold benefits, including buttressing rural networks, so that small

market broadcasters and independent programmers can reach all Americans where they are, on any device they wish to use.

The Honorable Bill Johnson (R-OH)

1. Do you believe Congress must fully fund the Secure and Trusted Communications Network Reimbursement Program in order for it to be successful in securing our nation's communications networks?

RESPONSE: Not fully funding the program risks that companies will leave dangerous Chinese state-owned equipment in their networks because they cannot afford to replace it. Alternatively, it forces those same companies to replace the equipment when they cannot afford to, potentially causing several of them to go out of business. The exceptional character of this program might be worth emphasizing, so that it does not encourage companies to purchase questionable equipment because they believe the government will bail them out should it become an issue.

The Honorable Earl L. "Buddy" Carter (R-GA)

1. The IIA requires the NTIA to utilize the FCC's new maps when deciding how much of the \$42.5B each State should receive.
 - a. Upon the release of the first version of the FCC's broadband DATA Maps, to what extent do you expect the first version to be challenged – both because of the accuracy of the Broadband Fabric and the providers' filings?

RESPONSE: I know that the FCC staff is working very hard to deliver high quality maps, and I am sure that the vast majority of providers are doing their best to provide high quality data. But mistakes are inevitable in such a large undertaking. Providers vary dramatically in their organizational resources and sophistication and even large providers often have flawed data. Even more important than preventing errors is making sure that they are fixed promptly. Thankfully, in a competitive market for broadband deployment, providers have an incentive to be vigilant about flawed data reported by other providers, but it's up to the FCC to turn that vigilance into swift corrective action.

On a similar note, the NTIA and state broadband offices will also need to be vigilant as they implement their programs. It is inevitable that some projects will be erroneously denied, and others erroneously approved based on poor quality data. We have heard concerns from internet service providers that in implementing previous programs, some state governments have been slow or outright unable to correct for errors in coverage data even when brought to their attention. To protect the federal taxpayer's investment in broadband deployment, the FCC, NTIA, and state offices should engage in constant information sharing with an eye to identifying and correcting coverage data errors.

- b. In addition, how long do you believe it will take to process any challenges that are received and how much more accurate will the map be as a result of the challenge?

RESPONSE: This will depend a lot on the specifics of the challenge, and on how quickly and precisely the FCC executes the challenge process. My office will continue to stress the importance of getting the challenge process right.

The Honorable John R. Curtis (R-UT)

1. I am excited about the promise of low earth orbit (LEO) satellite systems and their ability to deliver high speed connectivity to remote communities in Utah. LEO satellite providers have announced plans to launch thousands and even tens of thousands of satellites, which drastically increases the need for safety rules and coordination among competing systems. How do you intend to address these space safety concerns and ensure these new technologies are deployed responsibly?

RESPONSE: Because the Commission grants market access to foreign-licensed satellite operators and grants licenses to domestic operators, it is the U.S. agency best-positioned to lead on the topic of orbital debris mitigation standards, which are the “rules of the road” for space. We have an open proceeding on the topic, and I very much support the bipartisan Satellite And Telecommunications Streamlining Act discussion draft bill that underscores the Commission’s authority to construct these rules, and ties their adherence to favorable application processing treatment.

I urge Congress to enact this legislation, but also believe there are changes that we can make in the present orbital debris proceeding, such as reduction of the 25 year de-orbiting rule, to reflect scientific and operator consensus. There are other ideas introduced by industry perhaps better suited to a further notice of proposed rulemaking on orbital debris mitigation for the development of a more fulsome record, such as active debris removal and tying processing incentives to demonstrated capabilities in constellation coordination. Investigating those approaches, together with reflecting the language of the Satellite and Telecommunications Streamlining Act in a further notice, would be a way to materially advance U.S. leadership in orbital debris mitigation.

My office is in close dialogue with stakeholders and subject matter experts throughout the industry, and the Office of the Chairwoman, on how the Commission can lead on this question, and we will soon send a proposal to the Office of the Chairwoman expanding on the points in this response.

Until then, we must recognize the issue is, in its essence, about international coordination. Though I would like to it extended further, I was pleased to see the Biden Administration announce a moratorium on certain varieties of anti-satellite missile testing. I hope that the whole of government will engage in a thoroughgoing effort to influence international counterparts to join with the U.S. in this and other important space safety and space traffic management initiatives.