

Questions for the Record
Subcommittee on Communications and Technology
Hearing on
“Oversight of President Biden’s Broadband Takeover”
November 30, 2023

The Honorable Anna M. Gomez, Commissioner, Federal Communications Commission

The Honorable Tim Walberg

1. Commissioner Gomez, thank you for answering my questions at the FCC oversight hearing on November 30th about your obligations under the Biden Ethics Pledge. I would like to follow up and ask some additional questions.

- a. Please describe how the Biden Ethics Pledge restricts your ability to participate in FCC matters and to meet with interested stakeholders.

RESPONSE: Attached is a copy of my signed Ethics Agreement, which was approved by the FCC’s Designated Agency Ethics Official (DAEO) and has been filed with the Office of Government Ethics (OGE). The Ethics Agreement details the steps I will take to avoid any actual or apparent conflicts as a commissioner and comply with the Biden Ethics Pledge and other applicable ethics regulations.

Also attached is a copy of my signed Ethics Pledge, which details additional commitments pursuant to E.O. 13989.

A copy of my Ethics Agreement is also publicly available at this link:

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/4B62C3D1B30DE0DF852589C9002F03EB/\\$FILE/Anna%20Gomez%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/4B62C3D1B30DE0DF852589C9002F03EB/$FILE/Anna%20Gomez%20%20finalEA.pdf)

The Executive Order on Ethics Commitments by Executive Branch Personnel (EO 13989), which provides further details on the applicability and operation of the Biden Ethics Pledge, is publicly available at this link:

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ethics-commitments-by-executive-branch-personnel/>.

- b. Please provide a list of former clients that are, or may be, impacted by the restrictions imposed on you by the Biden Ethics Pledge.

RESPONSE: In my signed Ethics Agreement, I fully detail the steps I will take to avoid any conflicts with former clients in compliance with applicable laws and regulations, as well as the additional restrictions imposed by the Biden Ethics Pledge.

- c. Please provide a list of the pending FCC matters that you are recused from.

RESPONSE: In my signed Ethics Agreement, I detail all of the steps I would take to avoid actual or apparent conflicts of interest. The Ethics Agreement also details steps I would take to obtain advice from the agency DAEO and other ethics officials, as appropriate, regarding possible recusals in specific matters.

- d. For matters involving former clients which you can vote under the Biden Ethics Pledge, but may not be able to meet with all parties, how do you plan to ensure all stakeholders have same opportunity to state their case?

RESPONSE: In my signed Ethics Agreement, I detail all of my arrangements regarding clients of my former law firm, Wiley Rein, LLP. As a Commissioner, I will work to ensure that all stakeholders have an opportunity to state their case, consistent with the Commission's rules regarding *ex parte* statements and other communications.

- e. Are the restrictions imposed by the Biden Ethics Pledge subject to waiver? If yes, how are waivers determined and by whom? If the decision is made on a case-by-case basis, what are the factors that go into that decision?

RESPONSE: In my Ethics Agreement, I agree to comply with all requirements of the Biden Administration's Ethics Pledge. In the event of any questions regarding that Ethics Pledge, I would consult with my agency DAEO as appropriate. With regard to any waivers, I would refer you to the Office of Government Ethics.

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- f. Do you expect to seek a waiver with respect to any matters from which you are recused?

RESPONSE: If such a situation arose, I would consult with the agency's DAEO to seek appropriate guidance for the specific matter.

- g. Are there any circumstances where you would accept a waiver? If yes, please describe those circumstances.

RESPONSE: As noted in my response to the previous question, I would consult with the agency's DAEO to seek appropriate guidance for the specific matter.

The Honorable Earl L. "Buddy" Carter

1. What can the Commission commit to doing that would encourage broadcasters of news, information and music to provide consumers with more local, original content?

RESPONSE: Local broadcasters are so important because they provide much needed and greatly trusted information to their communities. Local news programs are where citizens learn about news and emergencies, both local and national, as well as about local music and arts and other community events. Local news broadcasts are important to the communities they serve because their management and employees are members of those communities and they therefore provide a unique perspective of value to each community. The reality is, however, that the economic model is getting more and more challenging given the changes in the marketplace. That is, we all are consuming news and entertainment on screens and devices of all sizes, from multiple sources and in every location in which we find ourselves. While this has opened pathways for more and more varied sources of news and entertainment, it has also changed how local broadcasters compete for advertising dollars. Local broadcasters are therefore looking for innovative ways to continue to profitably serve their communities.

The Commission is looking at ways to incentivize more local programming. To that end, for example, the Commission is considering and I support a Notice of Proposed Rulemaking that proposes rules to prioritize the processing of license renewals and applications for assignments or transfers of licenses filed by commercial and noncommercial radio and television broadcast stations that provide locally originated programming. I am happy to work with you on ways to further incentivize the creation of more local, original content.

2. As various streaming platforms have emerged, we have seen drastic changes to the digital media landscape. What steps should the FCC take to ensure that the large industry players promote a level playing field and negotiate in good faith with a broad array of smaller and independent content owners to foster a competitive video marketplace?

RESPONSE: You are correct, we have seen drastic changes to the digital media landscape. We know this anecdotally through differences in how we and our families consume media, and the Commission has objectively quantified this in the data it has collected and disseminated through its biennial Communications Marketplace Reports, the last of which was released on December 30, 2022. Further, I have met with independent programmers and understand their concerns with how certain types of agreements and practices are limiting their ability to compete in the current video marketplace. To that end, I applaud and support the Chairwoman's initiative in taking a fresh look at a proceeding on this issue that was closed without action in the last administration. This proceeding would seek comment on the current state of the marketplace for diverse and independent programming, including obstacles faced by independent programmers seeking MVPD carriage and carriage on online platforms, and the impact of such practices on consumers. As always, it will be important to keep our statutory guardrails in mind as we consider what steps we can and should take to further public interest objectives such as fostering a competitive video marketplace for smaller and independent content owners and creators.

3. How do the rising costs of bundled programming impact streaming platforms' ability to make niche channels or channels from independent content providers available to consumer?

RESPONSE: Independent programmers have also raised concerns about the impact of bundling practices in meetings. The draft Notice of Proposed Rulemaking that seeks comment on whether certain types of agreements and practices are limiting the ability of independent programmers to compete in the current video marketplace specifically seeks comment on current program bundling practices and how such practices impact the independent and diverse programming market. I support moving this proceeding forward so we can learn more from the record. I am happy to work with you on what steps we can and should take to further public interest objectives such as fostering a competitive video marketplace for smaller and independent content owners and creators.

The Honorable Larry Bucshon

1. In the past I cosponsored legislation directing the FCC to study reforms to who pays into the Universal Service Fund and understand that multiple Commissioners here today support USF reforms as well. I recognize that the Commission has asked Congress to recommend how the financial burden on consumers could be reduced as the contributions system for the universal service programs is reformed. But given the recent political decisions that have been issued by the FCC, I am wary of giving the commission very broad discretion and rulemaking authority to do so. Do you have any preferences on the specific methodologies that the FCC would pursue if given such rulemaking authority to assess broadband providers and edge providers? Are there considerations for this committee to be aware of to ensure that USF reform would not increase the financial burden on consumers?

RESPONSE: The Universal Service Fund (USF) provides the necessary connections for rural communities, telehealth providers, schools and libraries, and low-income individuals. These connections allow for full participation in digital life. We must ensure that the USF is set up for success so that all of us can experience the benefits of the next-century economy. As we consider making changes to the USF contribution mechanism, we must consider how any assessments on consumers' bills will affect the affordability of the assessed services.

Congress created the USF and the current contributions system when it overhauled the Communications Act in 1996. The theory then was that fees on consumers' long-distance phone bills would support the upkeep of phone networks throughout the country. Of course, much has changed since 1996. As subscription to landline telephony has declined, the contribution revenue, i.e., reported revenues from interstate telecommunications services, has declined as a result. Since demand for USF programs has remained

relatively stable, this has caused the contribution factor to increase over the past two decades.

The Commission has considered and evaluated proposals to modify this current contributions system. In the Infrastructure Act, Congress directed the Commission to submit to Congress “a report on options of the Commission for improving its effectiveness in achieving the universal service goals for broadband in light of this Act . . . and other legislation that addresses those goals.”

Consistent with the Infrastructure Act, the Commission adopted the *Future of Universal Service Fund Report and Order* and submitted it to Congress on August 15, 2022. In terms of contributions, the Commission received proposals in the record recommending that the contributions base be expanded to assess Broadband Internet Access Service or a broader base of entities, including edge providers. The Commission found that there was significant ambiguity regarding authority to broaden the base of contributors, and recommended that Congress provide the Commission with the legislative tools needed to make changes to the contributions methodology and base in order to reduce the financial burden on consumers, to provide additional certainty for entities that will be required to make contributions, and to sustain the Fund and its programs over the long term.

As Commissioner, I am interested in hearing about various proposals to reform the contributions system. I recognize that legislative action may be required to reform the current contributions system. I welcome the opportunity to work with this Committee, the bipartisan USF Working Group, and Congress on how we can best ensure our long-term USF goals. Most importantly, I am committed to working with the Chairwoman, Congress, and stakeholders in ensuring that lower- and middle-income consumers are not harmed should the contributions system be reformed.