

## Attachment—Additional Questions for the Record

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

The Honorable Nathan Simington, Commissioner, Federal Communications Commission

#### 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 more local, original content?

**RESPONSE:** The Commission needs to make it possible for broadcasters to continue to operate in small markets. If the Commission takes its commitment to localism seriously at all—and Commission leadership currently does not—it must acknowledge that broadcasters *need* to achieve economies of scale to survive in smaller broadcast markets in the future. Consequently, the Commission should *not* take unprecedented steps to hasten to secular decline of local broadcast news in small markets by further restricting their ability operate profitably. This means market ownership subcaps in broadcast television should, *at a minimum*, not be further tightened.

Sports and local news drive broadcast viewership. These are the sources of value for linear television; they are the *only* linear content truly succeeding in driving viewership and advertising revenue in the unified video marketplace, local *or* national. The Commission should endeavor *not* to hasten the death of local broadcast news through tightening ownership subcaps the way it did local print news through its cross-ownership rules.

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:** While there are many approaches the Commission can take within its authority, its existing authority is fully inadequate to deal with a unified video marketplace where more and more video content is delivered on the internet. We have some tools that can potentially address the question here and there, but the Commission, in general, lacks the authority to “deal” with IP-based media.

So Congress can, and should, do one of two things. Either get the Commission out of the business of media—strip the Commission’s authority on broadcast, MVPDs, and DBS to its barest essentials that deal with solely deal with the well-functioning of the physical transmission mediums—or get the Commission fully into the video business by expanding its authority to reach out and touch edge providers and IP-based media. What cannot

happen, and what is harming broadcasters and traditional MVPD and DBS providers, is a regulatory impedance mismatch between “legacy” linear video and new, largely on-demand, online video. Online content companies will argue that they have an absolute First Amendment right to be totally unregulated. At minimum, Congress should thoroughly study this question from all angles and not allow itself to be put off by a pat argument.

My own view is that, under today’s circumstances the Commission should, in targeted ways, be de-commissioned in broadcast media.

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

**RESPONSE:** I am not certain that they do, but here is one way that that can happen. Suppose that a large network, owning a portfolio of media properties covering SVOD, AVOD, vMVPD, linear cable channels, and broadcast properties is placing its portfolio of video content with a distributor. The distributor wants the media company’s most valuable, most-viewed content; the media company wants to place its entire portfolio for the most money it can get. What can wind up happening is that when the media company “ties” its lower-value content to its higher-value content—and the distributor generally winds up taking this deal in some respect—that can have the effect of crowding out some of the “room under the cap” for the distributor, essentially reducing the dollars available to support an independent programmer in a video bundle.

Having said that, there are no innocents in the transaction. The distributor, the media company, and the independent programmers are all *extremely* sophisticated entities, and I am not certain that the commercial failure or success of independent programmers *in relation to* costly “bundles” is a *bona fide* market failure. The prevalence of MFN clauses *may* create conditions for a kind of market failure for independent programming, but I have evaluated not *nearly* enough data to judge that particular issue.

### **The Honorable Randy Weber**

The FCC adopted new rules to accelerate the process for considering satellite applications. The most important new reform in this “Satellite Streamlining Order” is that the FCC would start the review process of new applications within 60 days. But I’ve heard concerns that the staff might still hold certain applications, effectively prejudging the outcomes without notice and comment.

1. Do you agree that addressing this lag-time in application decisions would improve the United States’s competitiveness in the commercial satellite industry?

**RESPONSE:** Absolutely. As I have stated to my colleagues repeatedly, I believe that the most important part of streamlining the FCC’s application processing procedures is ensuring swift and efficient FCC action—which will maintain U.S. leadership in the satellite communications service industry. It will also nurture the growth of the broader space sector, which includes new and innovative manufacturing processes, robotics, and other future innovations. It is crucial that we implement a regulatory process that expedites industry’s ability

to innovate. The FCC should not be an obstacle and I believe that holding back some applications from the 60 day deadline is unacceptable.

The restrictive and sometimes outdated service classification categories adopted by the International Telecommunications Union (ITU) are a key factor driving slow FCC response times. The FCC should work with Congress and the State Department to push for faster and more flexible ITU classifications and processes. I and my staff would be happy to facilitate these conversations so that the USA can maintain leadership in international organizations without unduly restricting its vibrant domestic satellite sector.

### **The Honorable Larry Buchon**

1. In the past I cosponsored legislation directing the FCC to study reforms into who pays into the Universal Service Fund, and understand that multiple Commissioners here today support USF reforms as well. I recognize 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 has been used to subsidize the deployment of broadband to millions upon millions of Americans. Every time someone is connected to broadband, edge providers gain a new customer, which depending on the company, can represent many hundreds or thousands of dollars of future profits. Internet companies are by far the major corporate beneficiaries of broadband deployment, so it only makes sense that they should pay for it. There are different ways to achieve that, including the assessment of revenue (whether total, advertising revenue, or some other subset), surcharges on based on traffic volume or other metrics, and combinations of multiple methods. More analysis is needed, and I am not yet prepared to fully endorse a specific approach, but any good reform of USF contributions would make sure that edge companies are assessed.