Attachment — Additional Questions for the Record

The Honorable Brett Guthrie

In your dissenting statement in the Video Navigation Choices proceeding, you stated that "the statutory authority on which this fantasy rests is equally far-fetched."

1. Is the statutory authority you were referring to section 629 of the *Communications Act*?

   Yes.

   a. When was section 629 added to the *Communications Act*?

      It was enacted as part of the Telecommunications Act of 1996 (P.L. 104-104).

2. Section 203 of H.R. 1555 as introduced on May 3, 1995, was entitled "competitive availability of navigation devices." Was section 203 competitive availability of navigation devices included in the final bill that passed the House on August 4, 1995?

   No, not as originally drafted. A similar, but less extensive, version was adopted as part of the final bill that became law.

   a. Did the Conference Agreement with respect to competitive availability of navigation devices indicate that "The conference agreement adopts the House provision…"?

      Yes, but it states that such adoption occurred "with modifications" to the House provision.

   b. Was the sponsor of H.R. 1555 and House Floor Manager for that bill then-Chairman of the House Commerce Committee Tom Bliley from Virginia, and was Chairman Bliley also the leading advocate for the adoption of the competitive availability of navigation devices provision that ultimately became section 629?

      Yes.

   c. For whom did you work in the time period from May 3, 1995, until President Clinton signed the *Telecommunications Act of 1996* into law on February 8, 1996?

      I was employed by the House Commerce Committee, the name by which the House Energy and Commerce Committee was referred to at the time, led by then-Chairman Bliley.

3. To what extent does your knowledge of the legislative history of section 629 and Chairman Bliley's intent contribute to your conclusion that "the statutory authority on which this fantasy rests is equally far-fetched"?

   My views on the statutory provision are based on the reading of the language itself. It is my belief that the Notice of Proposed Rulemaking, as approved by the Commission, exceeds the statutory authority provided the Commission. In particular, its reach to cover non-device or non-equipment "set top boxes" is beyond what Congress authorized. These views, however, are also supported by my experience working for then-Chairman Bliley, my knowledge of the compromises that were made to facilitate the enactment of the Telecommunications Act of 1996, and my understanding of the context and make-up on the House of Representatives at that time.

The Honorable Pete Olson

1. It is not often that you hear from regulators to not expand their jurisdiction. However, both of you have expressed concern with the ISP privacy NPRM and reiterated that he Federal Trade Commission already regulates ISP privacy and it does it well.

   a. Do you think the FTC is the better ISP privacy regulator? Can you elaborate?

      While use of the word "better" is a relative term, the FTC has far more experience and resources dedicated to the issue of privacy than the FCC. The FTC, through decades of involvement, is capable of considering the complex issues that arise when considering privacy in general or broadband privacy, more specifically. Although I may not agree on each and every decision that it makes, it is my belief that the FTC has properly earned its reputation, subject to change, as a thoughtful but appropriately forceful regulator on the issue of privacy.

2. Shouldn't the FCC adopt broadband privacy rules that are consistent with the FTC's privacy framework and the Administration's 2012 Privacy Report and Consumer Privacy Bill of Rights – i.e., a technology-neutral approach that applies consistent rules based on the type of data and how it's being used, and requires opt-in consent solely for the use and disclosure of sensitive information such as financial, health, and children's data, as the FTC has determined – rather than pursue the radical departure from this highly successful approach that the FCC's NPRM is proposing, especially since this departure would deprive consumers of innovative and lower-priced offerings that they routinely receive today, block ISPs from bringing new competition to the highly concentrated online advertising market, and provide substantial ammunition to those seeking to legally challenge and dismantle the recently approved EU-US Privacy Shield by calling into question the adequacy of the FTC's privacy framework which is a key component of this important international agreement?

If the FCC is going to adopt broadband-specific privacy regulations, I agree that – for the reasons you outline and others – such regulations should be consistent with the approach and structure used by the FTC.

3. I want to ask about the new broadcast standard – Next Generation Television – which the NAB and the Consumer Technology Association submitted to the FCC for approval in April. This new optional standard has the potential to bring new benefits to consumers and will help broadcasters retain their important role in providing local news and additional services to viewers. Can you comment on this new standard and give us a sense of when the FCC will issue a proposed rule on adoption of this innovative optional new technology?

   Chairman Wheeler is best positioned to answer the timing portion of your question, although I hope Commission consideration is not unnecessarily delayed. In my preliminary review, there is a lot to like with the new ATSC 3.0 set of standards, even though a good portion of them are still being decided. I would prefer that the Commission take an approach that eliminates barriers to any new standard, rather than seek to endorse one particular standard or set of standards. The television industry would benefit from a structure whereby a broadcaster can upgrade its delivery standard as it sees fit, similar to how the wireless industry does for its delivery standards, rather than require Commission action each time technology changes.

The Honorable Mike Pompeo

1. Commissioner O'Rielly, Chairman Nunes and I sent a letter to Chairman Wheeler asking him a series of questions related to his set-top box proposal and cybersecurity. I'd like to ask for your response related to foreign manufacturers and software developers.

   a. Under the current NPRM on set top boxes - How will the FCC determine whether a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S.?

      In reading the text of the NPRM, which I did not support, it is unclear how the Commission would be able to do so.

   b. How will the FCC determine whether such manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity?

      I do not know of any mechanism available to the Commission to monitor or prevent such information transfer.

   c. If a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S., what legal recourse would the FCC have to stop the foreign entity from using or sharing the information?

Similarly, I do not know of any mechanism available to the Commission to stop a foreign entity from using or sharing such information.

2. Commissioner O'Rielly, to accommodate concerns of programmers, Chairman Wheeler has said that he would allow pay-TV providers to cut off content to consumer electronics and application providers that do not abide by certain conditions. That might stem further injury.

    a. But the FCC would not be able to award damages to programmers to compensate them for the harm that has already occurred, correct?

    Correct.

    b. And while in some cases the FCC can assess fines that go to the Treasury, the FCC would not have jurisdiction over consumer electronics and application providers to assess even fines here, right?

    Depending on the provider and the practices in question, the Commission may have limited jurisdiction to enact any penalty.

3. The White House released a privacy report in 2012 which endorsed a "level playing field for companies and a consistent set of expectations for consumers." Also, the FTC explained in its 2012 Privacy Guidelines that "any privacy framework should be technology neutral" and noted that ISPs are just one type of large platform provider.

    a. Do you believe consumers' expect the same information about their online activity to be subject to different privacy rules depending upon the type of entity collecting their information online?

    No, numerous surveys and consumer input have shown that consumers tend to support privacy structures that are responsive to the sensitivity of the information or material. I am not aware of widespread support for treating information differently based on what type or organizational structure of entity may collect, share or use it.

4. Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Services of federal student loan debt are legally obligated, by their contracts with the Department of Education, to reach out multiple times to borrowers to help them understand all of their options as they face their obligation to repay debts. Yet, at the same time you have the TCPA, which holds those same companies strictly liable when they in good faith call a borrower who has consented to that outreach but the borrower has changed his/her number and so the call goes to someone who now answers to that reassigned number. On July 5, the FCC released its Declaratory Ruling in which you said, "we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government

business, except when a call made by a contractor does not comply with the government's instructions."

a. Is it your opinion that student loan servicers, while following their legal obligations in their contracts with the Department of Education, should be exempt from TCPA? Yes or no; and if no, why?

Yes.

The Honorable Gus Bilirakis

1. In March we talked about the uncertainty facing businesses of all sizes that have sprung up from applying the outdated TCPA to modern forms of communication. Some industries have been exempted from the rules, while others are still constrained with this uncertainty and are petitioning the FCC on an individual basis. Since it doesn't appear that a TCPA overhaul is on the docket anytime soon, can we do more to expedite these petitions?

   I am supportive of efforts to expedite consideration of properly submitted petitions, because the Commission's interpretation of the TCPA is preventing legitimate companies from offering legitimate services to those consumers that want them. At the current time, my colleagues at the Commission may have a different view.

2. Commissioner O'Reilly, you've recently outlined over two dozen process related areas where the FCC could improve in terms of efficiency and transparency. Are mandatory, timely responses to petitions one of those improvements that could help businesses conduct their business with certainty?

   Consistent with legislation approved by this Committee, I support the establishment of deadlines for consideration of petitions submitted by outside parties. That doesn't always mean that I will approve of such petitions, but no one should have to wait years upon years for a decision by the Commission. Beyond providing certainty and finality, such deadlines would also allow petitioners to expedite judicial review, as appropriate.

3. I'm troubled by the outdated restrictions that remain in place after the required Quadrennial Review has finally been completed by the FCC. Can you explain what the potential impact of not updating ownership rules means for broadcasters and newspapers that operate in the modern, competitive media marketplace?

   The Commission's unwillingness to update its media ownership rules unfairly harms broadcasters and newspapers, denying new investment opportunities for potential buyers/sellers in such markets, synergies of operations, and the ability to respond to the competitive pressures that exist in the current media environment.

The Honorable Billy Long

1. It is clear that the TCPA, which became law in 1991, is sorely out of date and in need of modernization. In your opinion, what parts of this existing law should Congress update?

While I generally refrain from offering critiques of existing laws, TCPA was crafted before the widespread deployment of wireless devices and their adoption as a substitute for landline telephones. The wireless provisions do not tend to reflect modern consumer usage. Further, TCPA is known as a "bounty statute" because of its private right of action, which has been abused by a subset of plaintiffs seeking to exploit the law for profiteering. The most significant problem with the TCPA is not with the law itself, but with the Commission's interpretation of it, which is being challenged in court at the current time. A reasonable, but forceful, interpretation, as opposed to the one approved by the Commission last year, would provide more certainty and reduced the unnecessary petitions for relief by legitimate companies.

The Honorable Bobby Rush

1. I understand and appreciate the Commission's desire for strong consumer protection standards, including a broad definition of personally identifiable information, but do you have any concerns about second and third order unintended effects on things that help consumers such as Caller ID or the protections provided by the Telephone Consumer Protection Act? If so, what, if anything, is being done to mitigate these effects?

Yes, I have expressed deep concerns and have dissented on items over the unintended consequences of the Commission's actions. Unfortunately, the Commission seems determined to rush ahead to establish new regulatory burdens without clearly understanding the totality of impact, with its TCPA consolidated declaratory ruling item from last year being just one example. The Commission also shuns any effort to conduct cost-benefit analysis prior to adopting new regulations. To rectify, I have advocated that the Commission spend greater effort understanding the impact of its decisions, including conducting a full and rigorous cost-benefit analysis before adopting new rules.

The Honorable G.K. Butterfield

2. Commissioners, for the rural areas that require more broadband infrastructure investment, do you see any dangers if the Commission's final rule on Business Data Services (special access) fails to fully recognize the real cost to provide fiber and other BDS services?

Yes, it is highly likely that, in the more rural parts of America, providers will simply choose not to invest in or build out facilities or ultimately withdraw services if they are not properly compensated.

3. If the order overshoots the mark, what could it do to rural economic development, jobs, and anchor institutions if BDS providers can't make the investment to provide service?

Reducing competition or eliminating providers in more rural areas not only harms the businesses that seek such services, but will also reduce the benefits of those

services in which special access is a vital component. For instance, wireless providers offering broadband in these areas will have fewer choices – if any – of fiber providers needed to connect wireless towers to the Internet and other services. Overall, the Commission's item has the potential to negatively impact the development, employment and overall health of those affected communities.