

**Senate Committee on Commerce, Science, and Transportation**  
**“Oversight of the Federal Communications Commission”**  
**Hearing held on Wednesday, March 8, 2017**  
**Questions for the Record to FCC Commissioner Michael O’Rielly**

1. Question by Senator Cantwell

At a time when the need for funds to support broadband deployment and adoption are at their highest, the universal service contribution factor is approaching its highest levels due to the declines in the interstate revenue that serves as its funding base. There is wide consensus that the current contribution methodology model is unsustainable.

The demand for more money for rural broadband is causing some industry stakeholders suggest reducing the amount of USF committed to support broadband service for our nation’s schools, libraries and low income consumers.

We should not be “robbing Peter to pay Paul.” Instead as good stewards of the universal service fund and the mandate for universal service found in the Telecommunications Act, we should be figuring out the best way to create a sustainable universal service ecosystem.

Part 1

Do you agree that the current contribution methodology framework is unsustainable?

**I would like to make it clear that, as the newly appointed chair of the Federal State Joint Board on Universal Service, I am speaking only for myself in answering this question. I agree that the contribution methodology framework is unsustainable, as currently structured, and have said so publicly many times.**

Part 2

Do you advocate lowering the amount of USF committed to the E-Rate and Lifeline/Link up programs and shifting those moneys to support the USF mechanisms that support rural broadband?

**I believe that in order to properly assess how to allocate spending among the four USF programs the Commission should determine the appropriate sum to take from telecommunications consumers, recognizing that doing so raises the price for service and leads to lower adoption rates. Accordingly, I strongly support having firm budgetary caps on all USF spending.**

**To be clear, I did not support expanding the E-Rate budget and spending in the December 2014 order. I argued that such expenditures would come at the cost of other programs or lead to a ballooning of overall USF spending, which seems to have come to fruition. Likewise, I raised objections to and opposed the unwillingness of a majority of my colleagues to adopt a proper budget for the Lifeline program when it was last considered by the Commission in March 2016. I support efforts to correct these decisions and to make other improvements.**

### Part 3

Over the years, the FCC has reviewed several different proposals to reform contribution methodology to shore up the contributions base.

Among the proposals made to reform contribution methodology are:

Numbers Plan—all communications service providers with working, “in use” telephone numbers (or equivalents) would be assessed a flat, per number fee;

Connections Plan—all connections to an interstate public or private network would be assessed a flat, per number fee;

Numbers/Hybrid Plan—would assess residential users a fee based on working numbers and business users a fee based on working connections; and

Modified Revenue—expanding the contribution base to maintain current system, require broadband providers and other communications service providers to contribute.

Has the Commission done any study of how any of the previously proposed contribution methodology reforms would impact the contribution factor or the universal service fund? If so what did those studies reveal?

**My understanding is that Commission staff previously studied various reform options as part of their work for the previous USF Joint Board. I was not on the USF Joint Board at that time, so I have asked Commission staff to brief me on their analyses in the near future.**

### Part 4

Does the Commission have plans to reform contribution methodology? If so when? If not, why not?

**I cannot speak to the Commission’s ultimate plans, but, as the new chair of the USF Joint Board, it is my goal to address our overall USF spending and the contribution methodology in order to provide a recommendation to the Commission for its consideration as soon as feasible. I do not have a firm timeline to provide at this moment, as I need to gather more information about potential reforms and consult with FCC staff and the USF Joint Board, but I plan to work as expeditiously as possible on the matter.**

## 2. Question by Senator Booker

I understand that on July 28, 2016, a group of managed care providers petitioned the FCC seeking declaratory ruling and/or clarification of the TCPA to reconcile the regulation of a health plan member’s telephone number under the TCPA with the regulation of the same use under the Health Insurance Portability and Accountability Act (“HIPAA”).

The Petitioners argue that a clarification is necessary to harmonize the TCPA, HIPAA, and prior Commission rulings to protect member health care communications. The calls covered by these clarifications fall within categories recognized by the Department of Health and Human Services as covered by HIPAA to enhance the individual’s access to quality health care. HIPAA, as you

know, regulates the privacy practices of covered entities and expressly encourages and permits such calls to be made. Congress passed HIPAA in 1996 and the HITECH Act in 2009, well after the TCPA, which was enacted in 1991. HIPAA and the HITECH Act, therefore, represent the more recent intent of Congress in regulating these specific types of communications.

What is the Commission's view on protecting non-telemarketing calls allowed under HIPAA in light of their unique value to and acceptance by consumers?

**Speaking only for myself, I am sympathetic to the unfortunate quandary faced by health care companies that must comply with competing statutes while also trying to provide the best overall care to patients. Unfortunately, the Commission has pursued an extensive (and misguided) reading of TCPA that has harmed the ability of health care companies – and many other legitimate industries – to serve their customers. I would be supportive of an overall effort to exempt these types of calls from TCPA.**

What is the Commission's view on acting to protect these calls expeditiously so that beneficiaries' access to health care is not jeopardized, rather than waiting for a larger "omnibus" TCPA ruling that could take much longer?

**I would be supportive of efforts to move smaller items in quick order. The FCC Chairman, however, is in the best position to answer questions on the timing of moving such protections and whether to do so individually or collectively.**

### 3. Questions by Senator Tom Udall

At a September 15, 2016 hearing of this Committee, you pledged to me that you would work with then Chairman Tom Wheeler to take action by the end of the year to help address the digital divide on tribal lands. The New Mexico Congressional delegation wrote you on January 9, 2017 to urge swift action on a tribal broadband item circulated by Chairman Wheeler on December 15, 2016 that has not been acted on. Why have you not responded to our letter?

**If there was any miscommunication or if I erred in not personally responding to the New Mexico Congressional delegation, I offer my sincere apology. I have great reverence for the Congress and believe it is my obligation to answer any specific issues, questions or concerns you have to the best of my ability. In this instance, it appears that similar letters were sent to the Chairman and Commissioners, in which case it is common practice to allow the Chairman to respond. To the extent that you were seeking my independent views, I did not realize this.**

**Substantively, I remain committed to working on bringing broadband access to all Americans that wish to have it, including those on tribal lands. Former Chairman Wheeler's draft item raised a host of critical issues and problems that were not sufficiently addressed prior to his departure. As you note, Chairman Pai has since circulated his own proposal for the Commission's consideration.**

FCC Chairman Pai wrote me on March 7th that he circulated an order that “would assist carriers serving Tribal lands in deploying, upgrading, and maintaining modern high-speed networks.” The order would also “allow carriers serving Tribal lands a greater ability to recover operating expenses, thus improving the financial viability of operating a broadband network serving Tribal lands.” Will you support this order?

**I am in the process of reviewing the text of the item and have sought to get a full and accurate picture of the effect that the policies will have on potential beneficiaries in order to render the best decision possible. This process has raised a number of further questions regarding expenses incurred by some of the applicable companies. In order to be good stewards of the funding provided by American consumers, I want these questions answered before casting my vote. On a more fundamental note, I am not sure that exempting certain companies providing service on tribal lands from our operating expense limits is the best way to increase broadband availability to these areas, which is the primary concern and objective.**

Do you believe the media is the “enemy” of the American people?

**No. However, having worked on public policy matters in Washington D.C., for over two and a half decades, I believe that a number of media outlets maintain biases that were and remain reflected in their reporting to the detriment of projects and views of my former employers or myself. Thankfully, the communications beat tends to avoid many larger politically-charged issues.**