Response to Written Questions Submitted by Hon.
John Thune
Written Questions for the Record to
Commissioner O'Rielly

Question 1. Please describe actions the FCC has taken to meet its statutory obligations in regards to the T-band.

As you know, the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) required the Commission to reallocate and reauction the spectrum in the 470-512 MHz band, commonly referred to as the T-Band, within nine years of enactment. This means that far in advance of February 22, 2021, the FCC must take steps to begin the auction and relocation process. Consistent with passage of the Act in February 2012, I pushed the Commission to cease processing applications for new or expanded T-Band operation and issue a Public Notice seeking information on how to enact the statutory requirement, which it did. Unless the law is modified or eliminated, I support the Commission taking the next steps expeditiously in this matter.

Response to Written Questions Submitted by Hon.
Roy Blunt
Written Questions for the Record to
Commissioner O'Rielly

Question 1. In your dissent to the 2015 TCPA Omnibus Declaratory Ruling, you expressed your disappointment with the Commission's decision, and discussed the need to balance consumer protection with that of businesses trying to contact their consumers for a legitimate business purpose. I agree with this approach along with six of my colleagues, which we vocalized in a letter sent to the FCC on July 24. Is the FCC planning to ensure the appropriate balance is achieved between these two interests when answering the TCPA questions set before it?

I certainly hope that the Commission will achieve this balance and will advocate internally to my colleagues for such an approach. As your letter eloquently highlighted, "The FCC's past interpretations of the TCPA have resulted in uncertainty about how those calling in good faith can comply with FCC regulations, making it more difficult for consumers to receive communications they want and need. This chills legitimate communications and leads to increasing class action litigation that often does little to help consumers."

In fact, as you mention above, I raised similar concerns in my dissent. Specifically, I stated that any claim that the order protected Americans is a farce and highlighted that, in its overreach, the order would penalize legitimate businesses and institutions acting in good faith to reach their customers using modern technologies. Therefore, I was pleased that the D.C. Circuit struck down the 2015 TCPA Omnibus Declaratory Ruling, providing the Commission with the opportunity to rethink its prior decision.

Response to Written Questions Submitted by Hon.
Jerry Moran
Written Questions for the Record to
Commissioner O'Rielly

Question 1. The MOBILE NOW Act, which was signed into law as part of the most recent omnibus package, called for the FCC and NTIA to identify 100 megahertz of new unlicensed spectrum while also requiring the creation of a "National Plan for Unlicensed Spectrum." What steps will the Commission take to free up much-needed unlicensed spectrum to support growing consumer demand for existing technologies and to provide innovation space for the technologies of the future? How are you coordinating with NTIA?

In July, the Commission initiated a proceeding to reallocate spectrum in the 3.7 to 4.2 GHz band, or C-band downlink, for licensed use. As the Commission considers this proceeding, the overall plan must also permit unlicensed use of the C-band uplink spectrum, or 6 GHz band. As Chairman Thune recently noted to the Commission, the 6 GHz band is a necessary ingredient to address the need for more unlicensed spectrum. This spectrum, along with the potential opening of the 5.9 GHz band and combined with the existing 5 GHz band, will provide the unlicensed community with access to a significant swath of spectrum, creating wide channels for Gigabit services. Moreover, in March, the Commission issued a notice to contemplate whether underutilized spectrum in the 4.9 GHz band – in close proximity to the 5 GHz band – should be allocated for unlicensed use, what the technical rules should be, and how the Commission should deal with the incumbents. Taken together, I believe that these actions will enable us to meet our statutory obligations under the MOBILE NOW Act.

Question 2. This committee worked hard to ensure that adequate funding for the broadcast channel repack in the omnibus this past March, including money for impacted FM radio stations and Low Power TV and Translators. Next month, phase one of the repack moves begin. What process does the Commission have in place to ensure that, if a broadcaster being moved to a different channel is unable to meet their phased move deadline, through no fault of their own, that they will not be moved off of their current channel?

I have repeatedly stated that if a broadcaster being moved to a different channel is unable to meet their phased move deadline, through no fault of their own, I would support modifications to that broadcaster's deadline in order to ensure that no broadcaster is forced off the air. I have been in constant communication with both the industry and the Media Bureau, regarding the progress of Phase 0 and any anticipated complications or slowdowns as we move forward. Throughout these conversations, it has been clear that affected broadcasters and the FCC are methodically working through the ten phases of the repack. Most experts are not anticipating huge problems until at least phase three, but I'll be following closely the experiences stations are having with the repack and what issues may be on the horizon. For instance, I was one of the first to raise awareness of the potential shortage of tower crews that could cause relocation delays.

Response to Written Questions Submitted by Hon.
Shelley Moore Capito
Written Questions for the Record to
Commissioner O'Rielly

Question 1. In many rural communities, students have long commutes on school buses sometimes upwards of half an hour, an hour, or even longer one-way. Given the connectivity challenges many students face in rural communities, how could E-rate help connect school buses with wifi to allow students to use commute time to do homework, projects, or other school work?

The FCC's Universal Service Fund programs—which are authorized pursuant to Section 254 of the Communications Act—have served to help connect consumers and communities that would not otherwise have access to modern communications networks. Accordingly, it is not surprising to see a desire to expand their scope to other aspects of our increasingly connected lives. At the same time, there are certain statutory, fiscal, and practical limits on this agency's mission that keep us from engaging in certain initiatives, no matter how compelling a particular idea may be. Of course, as I have stated on multiple occasions, any time Congress provides the Commission with clear direction via the passage of legislation, I will implement it as required. In this case, absent new statutory requirements, the Commission currently lacks legal authority to fund such projects under the E-Rate program.

FCC Oversight Hearing
Senator Cantwell
Questions for the Record

Question 1. Your agency has been tasked with commencing a study of broadband deployment and access on tribal lands by March 2019. The agency has been criticized in the past for having less than robust compliance with the need for tribe consultation. How can we optimize the tribes' participation in the broadband study and the composition of the report?

My door remains open to any stakeholder who would like to weigh in on any proceeding at the agency, and I have met with tribal representatives on numerous occasions, both at the Commission and while traveling throughout our nation. I am committed to improving tribal broadband connectivity, and the Commission should discuss policy changes and seek to gain accurate information from tribes regarding the state of communications on tribal lands. At the same time, consultation does not require tribal approval or provide tribal representatives a veto over Commission actions. To facilitate the most accurate and helpful report in 2019, the Commission should seek a dialogue with tribal representatives to obtain necessary information. However, such a process should not be seen as a means to acquiesce to whatever policy changes tribal representatives are seeking.

Question 2. Do you think it's important that the upcoming quadrennial review to review the changes that have been made to media ownership over the past 18 months and the impact that these changes have had on localism, media concentration and diversity?

Section 202(h) of the Telecommunications Act of 1996 requires that the Commission review its rules on broadcast ownership every four years to "determine whether any of such rules are necessary in the public interest as the result of competition," and "shall repeal or modify any regulation it determines to be no longer in the public interest." As statutorily required, we should review all of our remaining media ownership rules, and whether they make sense in the current media marketplace. The law is specific in its focus on existing rules and not those that have been eliminated already.

For instance, in November, the Commission found that some of our rules, including the Newspaper/Broadcast Cross-Ownership ("NBCO") rule, was not necessary to promote competition, localism, or ensure viewpoint diversity. In February, the Third Circuit Court of Appeals denied a mandamus petition challenging our order, allowing our revised rules to go into effect. Unfortunately, I believe the repeal of the NBCO rule happened 15 years too late, and, as we approach the 2018 Quadrennial Review, I hope that we can make more changes so that our rules will truly reflect the modern media marketplace that the Third Circuit recognized as early as 2004.

Question 3. In 2016, the Court of Appeals chastised the FCC for making changes to media ownership rules without the benefit of having completed statutorily mandated reviews of the media marketplace and media ownership rules that were required in 2010 and 2014. Basically

the court was saying that the FCC's policy making needed to be based on data and analysis. It's my understanding that the FCC needs to start its next data gathering review this year.

Given the court's guidance that any FCC changes to media ownership rules should be grounded in the type of up-to-date data and analysis required by the quadrennial review process, what you would recommend that the next Quadrennial review cover?

While I have expressed concerns with the Third Circuit's reasoning in this set of cases, I agree that the Commission's efforts on the 2010/2014 Quadrennial Review were shoddy at best, ignoring the record and marketplace data to indefensibly maintain rules that should have been dismissed years ago. Consider that prior to Commission action, the Third Circuit admonished the FCC for its delay in our review and specifically highlighted the NBCO rule, stating that "the 1975 ban remains in effect to this day even though the FCC determined more than a decade ago that it is no longer in the public interest."[1] When the Commission finally did act, it examined the full media landscape then did nothing to adjust our rules in response to that landscape. In fact, despite having the votes to eliminate the cross-ownership rules, the Commission ignored precedent, consensus, and the record before it and in an about-face, decided to maintain the NBCO rule.

For the next Quadrennial Review, I hope that we can more honestly define the media market as it exists today. For instance, while our November Order acknowledged that the video marketplace has substantially evolved, the Commission declined to expand its market definition beyond local broadcast television stations. I believe there is ample evidence that cable operators, over-the-top providers, Internet sites, and social media platforms compete with local broadcasters.

Further, I hope the 2018 Quadrennial Review will more fully review each and every aspect of our Broadcast Ownership Rules. For starters, it's time to review the Commission's AM/FM subcaps. Additionally, I have long called for a reexamination of the duopoly rule. In many markets, duopolies or triopolies could strengthen the overall state of broadcasters and allow stations to concentrate more resources on bringing more and higher quality local content and news to their viewers. In November, the Commission rightfully eliminated the "eight voices test," which made even less sense in 2017 than it did in 2002 when the Commission first sought to eliminate it. As to the relaxation of the top-four restriction, I would have preferred for relief to be provided through bright-line rules rather than relying on staff-driven case-by-case waiver assessments. I trust that as we re-examine this issue, as well as its possible elimination altogether, as part of the 2018 Quadrennial Review we will give serious weight to a full elimination of the duopoly rule.

Question 4. When I asked Chairman Pai at the hearing if the FCC has the authority to address cybersecurity threats, he said that the FCC currently lacks the authority. In your view, which federal agency, if any, is the lead agency on cybersecurity issues, such as SS7, impacting wireless telephone networks?

[1] *Prometheus Radio Project v. FCC*, 824 F.3d 33, 50 (3d Cir. 2016) (*Prometheus III*).

I agree with Chairman Pai that current law provides the Commission with little authority over Internet or communications network security. I have written about, given speeches, testified before Congress, and spoken publicly on that exact point. Cybersecurity is certainly and rightly a policy area that requires a significant amount of attention. Accordingly, it seems that everyone wants to be involved. The Senate Homeland Security and Governmental Affairs Committee held a hearing on this very topic last year, finding that duplicative cyber regulations imposed by various federal agencies have taken industry's attention away from securing their networks and towards a compliance, check-the-box regime.[2] That is why Congress assigned responsibility over these issues to the Department of Homeland Security. It is detrimental for any agency or department to try to insert itself into an area under another's jurisdiction. Of course, if Congress passes a statute providing the Commission with authority over this issue, I will fully implement any new authority given to the Commission.

Question 5. The FCC has publicly encouraged wireless carriers to voluntarily address cybersecurity issues related to SS7 that impact their networks. Does the FCC currently have the authority to require wireless carriers to address cybersecurity issues related to SS7? If not, please explain why.

No. Those that suggest the Commission has authority in this space point to specious readings of the law, such as Section 1 of the Communications Act of 1934 providing some universal authority over all communications activity, especially cybersecurity. However, the plain reading of Section 1 clearly shows that it serves as a preamble to justify the creation of the FCC. It sets the stage for Congress moving away from the Federal Radio Commission and to the "modern" Commission and serves as a policy statement, not actual authority. I would be troubled to try to read cybersecurity within any other provisions in our current statutory authority.

Question 6. According to a recent article in the Washington Post, governments in other countries, including the United Kingdom, have "commissioned independent testing of the vulnerabilities in national cellular networks." Does the FCC currently have the authority to commission independent cybersecurity testing of U.S. wireless networks? If not, please explain why.

No. While I can't speak to the regulatory authority provided to foreign regulatory bodies, the Commission's authority in this space is limited. Instead, the Commission relies on its advisory committees to be kept up to speed on pertinent topics and a partnership with the Department of Homeland Security in its exercise of pertinent authority.

Question 7. Does the FCC currently have the authority to require mobile carriers to assess risks relating to the security of mobile network infrastructure as it impacts the Government's use of mobile devices? If not, please explain why.

[2] U.S. Senate Homeland Security and Governmental Affairs Committee, "Cybersecurity Regulation Harmonization" (June 21, 2017), https://www.hsgac.senate.gov/hearings/cybersecurity-regulation-harmonization.

Government entities, through their procurement processes, can always seek to require mobile carriers to provide certain levels of services in order to receive their business. However, that would probably be done individually by such government entities, rather than by the FCC.

Question 8. Does the FCC currently have the authority to compel mobile carrier network owners/operators to provide information to the FCC to assess the security of the carriers' communications networks? If not, please explain why.

The Commission engages in various information collection processes with mobile carrier network owners/operators to provide statutorily mandated reports to Congress. However, I am not familiar with any required report that would permit us to compel mobile carrier network owners/operators to provide information to the FCC to assess the security of the carriers' communications networks.

Question 9. A recent investigation by Senator Wyden revealed that wireless carriers were providing customer location to private companies without verifying that users had consented to this disclosure of private information. In response, all of the major wireless carriers announced they would stop selling location data via location aggregators.

I am aware of the recent release of certain consumer location data by a company, Securus, that collects this data, upon receiving consent from the wireless subscriber, as part of its prison payphone offering. It is my understanding that the wireless carriers provided the location information to an aggregator, LocationSmart, which then provided the information to Securus. This is an issue that I am following, and I am in the process of obtaining the facts so that I understand exactly what consent was received from subscribers, how this data was collected, and what led to the disclosure of this information. It is also my understanding that the Commission has opened an investigation into these events. One of the issues that will need to be considered is whether we have authority over the specific facts presented in this case. I do not want to prejudge an issue that is likely to come before me in the coming months, but I am happy to work with you and your staff as we continue to consider this matter.

Question 10. Is location data is protected by 47 U.S.C. § 222, regardless of whether it is collected when the subscriber is making a call, browsing the web from their smartphone, or even when the subscriber's phone is not being used and is in the subscriber's pocket? If not, please explain why.

As I stated in my previous answer, the Commission is currently looking into this very issue, and I will reserve judgement until I have all of the facts and am able to perform a thorough statutory analysis. To my knowledge, the Commission has not addressed this issue before, and I expect that, while I do not have insight into the parameters of the staff investigation, this is one of the issues that the Commission will be exploring.

Question 11. Has the Commission responded to the Third Circuit mandate in the Prometheus Radio Project v. FCC line of cases to examine the impacts of broadcast consolidation on ownership opportunities for women and people of color?

Yes, it is my understanding that appropriate paperwork was filed with the court in this matter. Chairman Pai deserves much credit for bringing to order an incubator program last month. The number of women-owned and -controlled broadcast stations and the number of African-American-owned and -controlled stations in the United States is abysmally low. As I stated at a Congressional hearing last October, the situation we have today is a result of our media ownership rules, and those rules have not worked. We must try something new. With our new Incubator Program, the Commission does just that. I truly hope that this program is a success and the court review will validate this approach.

Question 12. Does the Commission intend to collect any data so that it can examine how and whether broadcast consolidation relates to ownership diversity?

I am not aware of the Chairman's exact plans for the 2018 Quadrennial Review, so I cannot speak with authority to this question.

Question 13. What percentage of broadcast stations are owned by people of color? By women? Are you satisfied with those levels? If not, what kind of meaningful changes can the FCC make to expand ownership diversity?

According to the Commission's most recent report on the ownership of commercial broadcast stations, women collectively or individually held a majority of the voting interests in 102 full-power commercial television stations, or 7.4 percent. African Americans fared even worse, holding collectively or individually a majority of the voting interest in 12 full-power commercial television stations, or 0.9 percent. Importantly, these are statistics that resulted under the FCC's archaic media ownership rules, which we took an important step to modernize in November. I truly believe that updating our rules to reflect the actual marketplace will allow broadcasters to fully compete in the dynamic marketplace and thrive in many instances. Congress shared this sentiment when it passed the Telecommunications Act of 1996, which included Section 202(h) that required the Commission to review its rules on broadcast ownership every four years in order to "determine whether any of such rules are necessary in the public interest as the result of competition" and to "repeal or modify any regulation it determines to be no longer in the public interest."[3] As I have previously stated, the situation we have today is a byproduct of decades old rules, and those rules have not worked. We must try something new.

Question 14. What data, if any, did the Commission rely on to justify its recent assumptions that deregulation in the form of loosening local ownership protections would improve competition and localism in the broadcast market?

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

Each time the Commission takes action, it relies on the record to support our decisions. While there are many actions we have taken in the broadcasting space, I will focus my answer on the NBCO rule as an example of our analysis. More than a decade ago, the Third Circuit found that the FCC "reasonably concluded" that the NBCO rule was not necessary to promote competition or localism[4] and in our November order we fully addressed why it was not needed to ensure viewpoint diversity. According to Pew, "Americans turn to a wide range of platforms to get local news and information."[5] The Third Circuit recognized this multiplicity of voices, including cable and Internet, in 2004. It simply disagreed with the Commission on the degree to which these services competed with local newspapers. But, something else happened in 2004: a social media platform known as Facebook launched, followed by Twitter in 2006. These social media platforms, along with Google, became go-to sites that many consumers visit to first learn about breaking national or local news. More than a decade later, it is hard to overstate the impact of social media platforms and online outlets on viewpoint diversity.

Question 15. Does the FCC have any intention of soliciting public input with field hearings regarding whether or not local broadcast stations are serving the public interest to inform evaluations of recent media ownership changes or future ownership reviews?

I am not aware of the Chairman's plans for the 2018 Quadrennial Review, so I cannot speak with authority to this question. However, I have found that past field hearings have offered little additional value to the record.

Question 16. Notwithstanding any recent legislation, in your opinion, which part of the federal government should maintain responsibility for updating and maintaining the broadband map? What is the basis for your answer?

It is critical that policymakers and the public understand where broadband coverage is available throughout America, and I believe that the FCC is well-suited to update and maintain our broadband maps. But to engage in an effective mapping effort, we must make a determination on the appropriate level of granularity for the underlying data, and evaluate the costs of and our mandate for producing more specific maps. This notwithstanding, the Commission has taken actions during my tenure to improve the broadband data reporting requirements, allowing for more accurate maps.

Question 17. What is your view on whether the federal agency should use or rely on the data sets of private companies to fill out the broadband map?

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[4] *Prometheus Radio Project v. FCC*, 373 F.3d 400–01 (3d Cir. 2004) (*Prometheus I*).

[5] Pew Research Center and Knight Foundation, How People Learn About Their Local Community 1 (Sept. 26, 2011) (How People Learn About Their Local Community), http://www.pewinternet.org/2011/09/26/how-people-learn-about-their-local-community.

The Commission should rely on a multitude of sources to provide reliable and accurate data in order to produce the best broadband maps possible. That being said, the Commission's previous data collection processes have had shortcomings, producing a great deal of inconsistencies in companies' submissions. The Commission is currently working on modifying our data forms in order to ensure that the information provided is helpful, consistent, and paints a more accurate picture of broadband deployment.

FCC Oversight Hearing
Senator Schatz
Questions for the Record

USF Contribution Methodology Reform

1. At the hearing you testified that contribution methodology reform "has been stuck for quite a while" because a proposal by the state members of the Federal-State Joint Board on Universal Service is not "viable amongst the members" of the full board. Explain specifically what the state members' plan proposes and why you think it is not viable?

The heart of the proposal by State representatives to the Federal-State Joint Board has been to expand the contribution base by requiring broadband companies – and ultimately their consumers – to pay new fees to support USF. I have long opposed the idea of imposing fees on broadband. Fundamentally, taxing broadband deters its adoption and use. Congress, the Commission, and certain consumer groups have recognized this on multiple occasions in the past.

It is also wrong to assume that assessing broadband will cause the current contribution factor to drop dramatically, resulting in lower fees for consumers. Broadening the base may reduce the fees on currently assessed services, but new fees will be applied to more parts of the same consumers' bills. In other words, it would just spread the pain in the hopes that people will not notice or care enough to object. Moreover, the notion that broadening the base would result in a lower contribution factor assumes that spending remains constant, which is unlikely given the recent interest in increasing overall spending.

2. What other proposals have been put forward by you or any other Joint Board members? How many meetings did the Joint Board hold to discuss the state members' proposal? How many times has the Joint Board met this year and last year to discuss contribution methodology reform, and when was the last meeting? Has the plan submitted by the state members been put to a formal vote by the Joint Board and rejected by a majority of the members? If it has not been put to a vote, why not?

Over the years, the Commission and, specifically, the Joint Board, have explored numerous options to replace the current methodology. I can't speak to Joint Boards overseen by other Commissioners, but I have had numerous conversations with the state representatives on their proposal, including a formal meeting held in San Diego. The state proposal has not been presented before the Joint Board for a vote because a majority of FCC members vehemently oppose capturing broadband in the contribution methodology. I believe such action would be extremely harmful, and we are under no obligation to vote on a proposal from the Joint Board that is doomed for failure when it comes to the Commission.

FCC Oversight Hearing
Senator Markey
Questions for the Record

The Commission is currently considering a forbearance petition to limit protections ensuring incumbent Local Exchange Carriers provide competing telecommunications carriers access to their networks at reasonable rates, terms, and conditions if there is not sufficient competition in the market. Will the Commission take into consideration the special circumstances of how Hurricane Maria devastated the local telecommunications infrastructure as it considers this proposal?

Without prejudging the petition before the Commission, I think it is fair to say that I have always supported a robust record in order to make the best decision possible. To the extent parties submit relevant information, I will give it appropriate consideration.

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
"Oversight of the Federal Communications Commissions"
Senator Udall Questions for the Record

Question 1: What is your view on what a meaningful tribal consultation should look like?

My door remains open to any stakeholder who would like to weigh in on any proceeding at the agency, and I have met on numerous occasions with tribal representatives, both at the Commission and while traveling throughout our nation. Tribal consultation means just that: The Commission should discuss policy changes and seek to gain accurate information from tribes regarding the state of communications on tribal lands. Consultation does not *require* tribal approval or provide tribal representatives a veto over Commission actions.

Committee on Commerce, Science, and Transportation
"Oversight of the Federal Communications Commission"
Thursday, August 23, 2018

Questions for the Record
Senator Margaret Wood Hassan

Question 1. It is my understanding that Commissioner Rosenworcel worked to include maternal health issues in the recently passed Notice of Inquiry on the FCC's proposed telehealth pilot program. Given that the inclusion of maternal health issues is critical for rural women and their families, will you commit to maintaining them, if this program moves forward?

In August, the Commission launched a Notice of Inquiry (NOI), led by Commissioner Carr, on a pilot program to examine whether to expand the Commission's telehealth program. Importantly, an NOI represents the very beginning of a process. As I stated at the Open meeting, as I follow the record in this proceeding, my goal is to ensure that any new program is: legally sound; coordinated both within the Universal Service Fund (USF) and with other agencies' programs to avoid duplication; cost-effective for consumers and businesses that would fund it; and accountable to the agency and the American public. The NOI raised some concerns along these lines, which I highlighted in my statement. I am pleased that Commissioner Carr got us to this point, but much work lies ahead. I will commit to rolling up my sleeves to address these matters and others, consistent with my principles, before any Notice of Proposed Rulemaking is considered. As it pertains to maternal health, I have witnessed the impact of the deterioration of access to certain women's health care in many rural parts of America and fully recognize that telehealth technologies, many of which are already in operation today to great success, can greatly improve this situation. As such, I would be in favor of including provisions related to maternal health, if the pilot project proceeds forward.

Questions for the Record from Sen. Cortez Masto
Senate Commerce Science and Transportation Committee Hearing:
"Oversight of the Federal Communications Commission"
Thursday, August 16, 2018 at 10:00pm SR253

For the Honorable Michael O'Rielly, Commissioner, Federal Communications Commission

Net Neutrality Comment Period
A recent FCC Inspector General report recently concluded, despite the FCC's repeated claims that comment period for the net neutrality repeal was the subject of a cyberattack, that it was actually just the comment system simply being overwhelmed with public outcry against the rollback of net neutrality.

Question 1. When did you first learn that the attack may not have happened?

I was not interviewed or involved in the Inspector General's (IG) investigation. I learned about the IG's findings just prior to its release on August 6, 2018.

Spectrum
As you know, spectrum will be vital part in deploying 5G. There have been a variety of pushes from industry for spectrum both for millimeter waves and mid-band spectrum below 6 GHz.

Question 1. What is the balance between mid-band spectrum and millimeter waves, and how have other countries struck that balance as they have worked to deploy 5G?

Experts agree that we need additional spectrum to meet the demands of a broad range of applications and to provide greater capacity, faster speeds, and lower latency. Next generation systems will capitalize on both new and existing licensed and unlicensed networks, utilizing low-, mid- and high-band spectrum, including millimeter wave frequencies. More than two years ago, I started focusing my attention on the mid bands, after it became apparent that a global shift in spectrum policy had occurred and the world was eyeing these frequencies as a component for 5G deployment. Thus, it became vital for the United States to have a serious mid-band play to complement our spectrum work in the low and high bands. Other nations seeking to lead on 5G have tended to focus their respective spectrum allocations on mid-bands and generally lacked a millimeter wave strategy.

Question 2. How does freeing up mid-band spectrum for 5G use impact rural access, especially with the high demand for these bands for rural areas?

The mid-band frequencies most often discussed for possible reallocation to flexible wireless use, including 5G services, are 3.55 to 3.7 GHz, 3.45 to 3.55 GHz, and 3.7 to 4.2 GHz. The first two bands are relatively unused by commercial providers because of protections afforded the Department of Defense. Thus, allowing commercial entities to use these bands under certain conditions should expand the options for providers, including those in rural areas. In fact, mid-

band spectrum is particularly attractive for rural mobile systems because it propagates farther than the millimeter waves. To the extent your question touches upon the geographic license sizes for the CBRS Priority Access Licenses (3.55 to 3.7 GHz), I have stated repeatedly that the Commission is working to make sure the license sizes work for as many entities as possible, reflecting that it is a prime spectrum for offering 5G services nationwide.

In terms of the C-band downlink (3.7 to 4.2 GHz), the most prevalent users are a handful of licensed satellite providers. In order to successfully complete the reallocation, the needs of current end users of the band will have to be addressed in one form or another.

Federal Broadband Coordination
The federal government has been involved in helping make the case for private companies to bring broadband to underserved areas for a long time. It's crucial that every federal dollar that goes to these communities is well spent, not duplicative, and gets sent out in a timely manner.

Question 1. What are some of the challenges for better coordinating federal resources and efforts to further deploy high-speed broadband?

I completely agree.

While efforts to provide new federal money towards broadband deployment are commendable, there is a potential for certain problems to arise. One such problem stems from the potential to allow certain funding to be used for fully-served or what some consider underserved areas. Regrettably, the definition of "unserved" has been formulated to include areas already having service, or already featuring multiple broadband providers. Moreover, there is a major disagreement over what should qualify as broadband for purposes of federal funding. I certainly would like for all Americans to have sufficient broadband speeds for whatever tasks they seek to accomplish. However, there is simply insufficient funding to subsidize "fiber" broadband builds, either wired or wireless, to every household nationwide–an effort that would cost hundreds of billions of dollars. Allowing different federal funding programs to have their own speed requirements greatly increases the likelihood that a tremendous effort will go to overbuilding in areas with preexisting service, including areas funded or expected to be funded by the Commission.

Fundamentally, federal funding should be targeted to addressing those 14 million-plus Americans without <u>any</u> broadband today. If not addressed statutorily, the next best option would be to ensure that program rules are written with strict prohibitions on duplication with other existing programs, alignment of speed requirements among federal programs, and a focus on the truly unserved.

Question 2. Do you consider current tools, such as working groups, sufficient to improve efforts to curb overbuilding and duplication?

Unfortunately, past experiences suggest that such efforts do not prevent inefficiencies, abuse, or misuse. For instance, coordination that consists of merely having discussions among bureaucrats is not sufficient to prevent overbuilding and duplication. While I have little doubt that added

dialogue among our three entities could be helpful, such dialogue does not solve the underlying problems that result in duplication, wasted spending, or worse. More affirmative protections are needed in law to truly prevent duplication.

Robocalls
Robocalls are one of the top complaints received by the FCC. Protecting consumers from these calls will take technological as well as enforcement efforts.

Question 1. Do you believe stronger enforcement efforts could offer further deterrence for people making illegal robocalls?

I certainly join with you and most consumers in seeking a solution that addresses the consumer problem of illegal robocalls, many of which initiate overseas. Many of these calls are intended to defraud or deceive consumers from their hard-earned income. The FCC certainly has been very active exploring different means to end such illegal practices, through both our rulemaking authority and in enforcement actions. While I believe these actions are important and should be continued, the low cost of illegal robocalls has unfortunately undermined the effectiveness of enforcement.

Question 2. Are fines enough to crack down on the worst offenders?

As I stated in my previous answer, while fines are important, it is hard to crack down on illegal robocall offenders. The cost to make such calls is cheap, and many of the bad actors are overseas, making the collection of such fines challenging. Again, while enforcement is important and necessary, fully cracking down on illegal robocalls remains a big challenge.

Nationalizing 5G
As you are aware, the Trump administration has suggested that nationalizing the 5G network could be necessary for national security.

Question 1. Do you believe that the private sector is best positioned to move forward with 5G?

Yes.

Broadband for Native Americans
Nevada is one of the nation’s leaders in school broadband thanks to E-rate modernization. Since the modernization order in 2014, we have seen 100% of our students reach the FCC's short term bandwidth goal -- this is quite the achievement in some of our very rural counties. But there is still work to be done -- in our state alone, over 3,400 Native American students still lack scalable broadband infrastructure. This year, Nevada school districts have requested E-rate funding to bring nearly $1.5 million in new fiber "special construction" to schools. Our state leaders have established an E-rate matching fund to accelerate these fiber builds as well. However, funding decisions have been delayed, leading to uncertainty.

Question 1. Can you commit to working with my office and Congress to provide certainty to e-rate funding decisions to help bring broadband to our most rural areas?

Yes, I always stand ready to work with Congress on any of our USF programs. However, it should be noted that I have raised fundamental concerns regarding such E-Rate fiber builds. Beyond being legally suspect, funding fiber construction projects has the ability to significantly undermine the competitive process and alter the competitive marketplace for such services in an area.

Child Protection Rules
The FCC has moved quickly to revise child television rules under the Children's Television Act, arguing that new modes of watching require updating the rules. In the proposed rulemaking, you propose to eliminate the requirement that broadcasters air their programming on main program streams, which would allow them to move to multicast streams. Low income kids really rely on this programming for education, so it's very important we get this right.

Question 1. Why not first issue a Notice of Inquiry, to fully examine the issue rather than move forward on such an aggressive timeline?

Both Notices of Inquiry and Notices of Proposed Rulemaking are vehicles that permit the agency to ask the necessary questions, obtain the relevant information, and fully and transparently consider all issues raised regarding any subject matter. Moreover, I respectfully disagree that the Commission has an aggressive timeline to move forward on this item. We are currently at the beginning stages of our comment period, with initial comments due on September 24 and reply comments due on October 23. This comment period of 90 days is typical, if not longer than other Commission proceedings. Once the record closes the Commission will review the record. There is no date set for determining a final path forward.

It is important for me to stress, that the launch of this rulemaking is the *beginning* of the process, not the end. That means everyone will have plenty of time to provide the requisite analysis of the proposed rule changes outlined in the NPRM before the Commission moves forward on any final decision. We can and will obtain the same data in an NPRM that we could in any NOI.

Question 2. Mutlicast streams have 10% of the viewership as a main feed, how will a move to these streams not be hugely disruptive to the current system?

As you highlighted, the NPRM considers allowing broadcasters the opportunity to move their children's programming to a multicast stream. This is an important protection for over-the-air only viewers, who do not have access to the plethora of children's programming offered from cable or over-the-top providers. To the over-the-air viewer, it should not matter if their programming is on channel 3.0 or 3.1. All that should matter is that they have access to the programming. Throughout our proceeding, the Commission intends to collect important input on how such a relocation would impact the current system. We also hope to learn who relies on "Kid Vid" programming today. According to initial studies of U.S. households, only 1.04% have children present in the home and have neither cable nor internet access. Moreover, of U.S. households, only 0.63% have children present in the home, have neither cable nor internet access, and a household income of less than $30,000 per year. This is not to suggest that this

population can or will be ignored. On the contrary, the multicasting option was designed to address these specific viewers.

Wearables/Rural Health

One exciting technology that will be enabled as we move to the internet of things and 5G is wearable technology and the possibilities for better health outcomes, including for rural Americans.

Question 1. Can you point to an example you have seen about how this technology is being deployed in a way that improves people's lives?

I have seen demonstrations of clothing that integrates wearable technologies, enabling remote data monitoring of those wearing the materials. This data is not only beneficial to improve workouts for ultra-athletes but can serve to monitor and alert those individuals who may be at risk for particular ailments, such as heart attacks. The reality is that, like all of 5G, we cannot predict with any accuracy the exciting new services wearable technologies may bring to improve the lives of Americans.

Question 2. How can Congress help assist the FCC in ensuring the deployment of this technology in the future?

Through the introduction of legislation such as the SPEED Act, STREAMLIINE Small Cell Deployment Act, the AIRWAVES Act, and Spectrum NOW Act, as well as the passage of the MOBILE NOW Act, Congress has made clear its priority to expand 5G deployment through both infrastructure reform and making additional commercial spectrum available to the private sector. I stand ready to work with the Committee on these and other bills put forward to achieve these goals.

Senator Jon Tester
Written Questions Submitted by Hon. Jon Tester to Federal Communications Commission

Question 1. I understand the FCC is working on a rule to assess whether to establish a program under which a spectrum licensee may partition and sublease the license to an unaffiliated carrier to serve a rural area. What is the status of that rule? What other steps are you taking to make sure rural carriers that want to buildout in rural America have access to Spectrum?

The Commission has long sought ideas and ways to facilitate secondary market transactions, including license partitioning and disaggregation and various leasing models, by those who may not wish to serve all of a particular license area. The Chairman is in a better position to outline the timing and status of this review.

In terms of my efforts to promote greater buildout via spectrum licenses, I believe that releasing as much spectrum as possible into the marketplace is one way to give smaller providers a greater opportunity to obtain licenses. This is why I have pushed so hard to reallocate as much mid-band and high-band spectrum for wireless flexible use, including mobile broadband. In my view, reducing scarcity, rather than limiting access, is the better course of action.

Senator Blumenthal Questions for the Record
Senate Committee on Commerce, Science, and Transportation Committee
"Oversight of the Federal Communications Commission"
August 16, 2018

Question 1. The Wall Street Journal's Editorial Board recently praised Chairman Pai's decision to challenge the Sinclair-Tribune merger, stating that "the FCC Chairman follows the law in stopping a merger." The editorial concluded by saying, "it's up to Congress to change broadcast ownership restrictions." Do you agree that only Congress has the authority to change broadcast ownership restrictions, like the national television audience reach cap?

Section 202(h) of the Telecommunications Act of 1996 requires that the Commission review its rules on broadcast ownership every four years to "determine whether any of such rules are necessary in the public interest as the result of competition," and "shall repeal or modify any regulation it determines to be no longer in the public interest." Therefore, I respectfully do not agree that only Congress has the authority to change broadcast ownership restrictions. To the contrary, the Commission is statutorily mandated to review and update these rules.

The one exception, of course, is to the national television audience reach cap. As I have stated previously, I do not believe that the Commission has the authority to modify the national audience reach cap, which also extends to eliminating the UHF discount. While the discount may no longer be technologically justified, it is up to Congress to make that determination, not the Commission. This was the clear intent of Congress, from my experience and perspective, when it partially rolled back the FCC's proposed cap increase of 45 percent in 2004.

Question 2. A December 2017 Notice of Proposed Rulemaking explores gutting one of the last few remaining rules protecting consumers from massive consolidation in media: the media ownership cap. Didn't Congress — through the Consolidated Appropriations Act of 2004 — very clearly instruct the FCC to set this cap at 39 percent? What authority would the FCC now have to change this cap?

After extensive debate and too many meetings to count, Congress enacted the relevant portions of the 2004 Consolidated Appropriations Act. The language in the law cannot be clearer from my opinion: it statutorily sets the national ownership limit and correspondingly removes it from the quadrennial review under section 202(h) of the Telecommunications Act.

While this is my interpretation, there is broad disagreement among interested parties over the Commission's authority in this space. Many qualified practitioners, for instance, make colorable arguments that my statutory interpretation is wrong. For these reasons, I believe it is time for the courts to opine on this matter. We need certainty, in a way that only the courts or Congress can provide, as to where the Commission's authority begins and ends. Therefore, I have stated that if the Commission proceeds, after a review of its record, to alter or eliminate the cap, I will support that item. That is not to suggest my position has changed, but only that I believe in getting to finality and am willing to cast a vote that will allow the Commission to take the needed step to get this to court review. Substantively, I believe the cap is not intellectually defensible and should be changed.