

Ranking Member John Thune
Questions for the Record
Nomination of Mr. Michael O’Rielly to be
Commissioner, Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on September 18, 2013

1. Mr. O’Rielly, rural Americans are facing significant call completion problems. I’m troubled by one study indicating that, during one period between 2011 and 2012, the incompleteness rate was 13 times higher in rural areas than in non-rural areas. Calls that fail to be completed result in rural businesses losing customers, and family members in rural areas being cut off from each other. As you can imagine, this is particularly a concern in states like South Dakota. That is why I’m pleased by the Federal Communications Commission’s recent order and notice of proposed rulemaking that seeks to enhance the FCC’s ability to investigate this problem, among other things. This action is overdue.

How familiar are you with the call completion problems being experienced in many rural areas of the country, and would you commit to using your authority as a commissioner to address such problems, should you be confirmed?

While I am not privy to the details of the item, I am aware that Acting Chairwoman Clyburn recently circulated an order and further notice of proposed rulemaking on this matter. I would tend to agree with the comments made by Chairman-designate Wheeler at his confirmation hearing that this issue appears to be one of enforcement. To be clear, I believe that violations of the FCC’s rules should be enforced vigorously and if the Commission needs to take additional enforcement action in this space I would be supportive.

2. Mr. O’Rielly, as you know, like other members of this Committee, I represent a state with significant rural areas, and I am firmly committed to expanding telecommunications opportunities for people in my state.

Should you be confirmed as a commissioner, how will you approach the challenges rural America faces with respect to communications issues?

During my many years working on communications policy, I have seen the importance of expanding communications services to all Americans. Having worked for several Senators in states with very rural areas, I am sympathetic to the challenges faced by rural consumers and will work to ensure the Commission focuses appropriate attention to these issues.

3. Mr. O’Rielly, as you know, Universal Service Fund reforms have had a significant impact on states like South Dakota that have large rural areas. Many in Congress have expressed concerns about the need to improve the FCC’s reforms, particularly with regard to the

Quantile Regression Analysis model used to determine recoverable costs for smaller rural carriers, to bring greater regulatory certainty for rate-of-return carriers.

Do you believe it is important to provide rural broadband providers with greater regulatory certainty in the USF program? If so, do you have any thoughts on how to achieve that?

I am aware that the Commission has made several modifications to the USF reform order to address concerns expressed by rural carriers. To the extent that additional modifications or corrections to the FCC's Universal Service Reform Order are necessary and would provide greater certainty to recipients, I would be open to reviewing any such suggested changes.

4. Mr. O'Rielly, as you know, one of the President's key initiatives is to make 500 megahertz of federal spectrum available for commercial use. While more spectrum is absolutely necessary, I believe that we need to focus on the quality of that spectrum, not just the quantity. In particular, the 1755-1780 megahertz band is one that many of my colleagues and I would like to see opened up for commercial use.

Should you be confirmed, will you work with me and this Committee to find ways, along with National Telecommunications & Information Administration (NTIA) and other federal agencies, to free up more federal spectrum for commercial use in a timely manner, particularly with regard to the 1755-1780 megahertz band?

Yes. As I stated during my confirmation hearing, I believe we should examine the use of federal spectrum to ensure it is being used as efficiently as possible and should look at all possible incentives to achieve this objective. Regarding the 1755-1780 band, the Department of Defense (DoD) has indicated it is able to exit this band and has submitted a transition plan which is currently under discussion with federal and industry stakeholders. It remains to be seen whether the alternative band DoD identified and would like to utilize is the most appropriate place for relocation. In any event, the Commission should work to auction this band in a pairing with the auction required by statute of the 2155-2180 band.

5. Deployment of communications infrastructure is critical to achieving universal service and economic growth. Congress addressed this reality by providing traditional communications service providers a statutory right to attach to utility poles under Section 224 of the Communications Act. However, the FCC has not provided broadband-only providers the same ability. Do you believe the FCC has authority to extend pole attachment rights to broadband-only providers?

The FCC's implementation of the pole attachment provision created by the Telecommunications Act of 1996 has generated numerous controversies and legal challenges since enactment. At the same time, they have proven to be valuable in extending certain communications services and competition to more Americans. It is my understanding that the Commission has not squarely addressed its authority with respect to broadband providers and broadband services in this context, so it

remains an open question. To the extent that a determination is made that pole attachment rights should be extended to broadband-only providers and the Commission does not have authority to do so, the Commission should seek such authority from the Committee.

6. Should you be confirmed, will you commit to visit South Dakota or a similarly situated rural state within the first year of your tenure as a Commissioner to see firsthand some of the communications challenges facing rural communities?

If I am confirmed, I would be pleased to visit South Dakota during my term and certainly visit a similarly situated rural state within one year of confirmation.

7. The FCC is the guardian of decency on the public airwaves yet it has not brought an enforcement action against any broadcaster in more than four years. Should you be confirmed, what actions would you take on the Commission to seek to enforce the current decency law?

The Commission has an obligation to vigorously enforce all of its rules. If I am confirmed, I will work with my fellow commissioners to ensure that occurs, including as it pertains to its broadcast decency rules. I would begin by seeking information on the volume and types of complaints the Commission has recently received as well as a review of comments received in response to the Commission's most recent inquiry on the issue.

Senator Roy Blunt
Questions for the Record
Nomination of Mr. Michael O’Rielly to be
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- 1) What ability does the Federal Communications Commission have to help identify and procure new bands of spectrum suitable for commercial wireless operations and what should the Commission do to continue to the process of freeing up more spectrum for commercial purposes, especially after the broadcast incentive auctions, AWS-3 and H Block auctions have been completed?

There are two main mechanisms to free new bands of spectrum for commercial wireless services: (1) the Federal Communications Commission (FCC) can seek to reallocate existing commercial spectrum to ensure such spectrum to is used as efficiently as possible, and (2) the FCC can work with the National Telecommunications and Information Administration (NTIA) at the Department of Commerce to identify spectrum allocated for Federal government users (e.g., Department of Defense) that can be reallocated to commercial wireless services. In my experience, the Federal government can reduce its allocation of spectrum, and therefore it represents the greatest opportunity to identify additional spectrum for commercial wireless services. In addition, there may an opportunity to increase dynamic spectrum sharing, but that in my experience the best path forward is to allocate as much spectrum as possible for flexible commercial use.

Senator Ted Cruz
Questions for the Record
Nomination of Mr. Michael O’Rielly to be
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1. Mr. O’Rielly: as you may be aware, on April 10 of this year myself, along with Leader McConnell, Sen. Cornyn, Ranking Member Thune, and the remaining Republican members of the Commerce Committee, sent a letter to the FCC expressing our grave concerns over any FCC attempt to impose the requirements of the failed DISCLOSE Act by regulatory fiat. In light of those concerns, I have several questions I’d like you to answer:
 - a. Does the FCC have the authority to implement the kind of requirements laid out in the DISCLOSE Act?

The DISCLOSE Act, as it was considered by Congress in 2010, was a comprehensive bill to regulate certain practices involving political campaigns, providing authority to the Federal Election Commission to implement its numerous provisions. To the extent the FCC attempted to use its limited authority, which is at best tangentially-related to the issue, to impose DISCLOSE Act-type requirements, absent Congressional direction via a new law, it would likely raise issues challengeable in our court system.

- b. When it comes to the issue of regulating political speech, which institution do you believe has primary authority in this area-- Congress or the FCC?

The Commission is a creation of Congress and exists to implement and enforce laws passed by the Congress.

- c. To the extent that you believe the FCC has the legal authority to regulate political speech, what statutory provision or provisions would you point to as the basis for that authority?

As a general matter, I believe the Commission must tread extremely cautiously when taking any actions with First Amendment implications. The Communications Act of 1934 grants the Commission only limited authority in the area of political speech. Specifically, Congress provided the Commission with authority under section 317 of the Communications Act to require broadcasters to include, at the time of the broadcasting, an announcement about sponsorship if the broadcast was paid for or furnished by another entity. In addition, under Section 315 of the Act, Congress established certain requirements on broadcasters to allow for equal opportunities for candidates for public office and public disclosure. To determine whether or not any particular action to regulate political speech was within the Commission’s authority would require additional legal analysis based on the specific action being considered. But, again, any such actions would need to be

solidly within the specific authority granted to the Commission by the Congress and consistent with First Amendment jurisprudence.

- d. To the extent that you believe the FCC has the legal authority to regulate political speech, what principles would guide your decisions on when limitations on political speech are justified?

As a strong supporter of the First Amendment to the U.S. Constitution, I would be reluctant to impose any limitations -- either directly or indirectly -- that had an impact on political speech.

- e. With regard to any potential FCC regulation involving political speech, how confident are you that the FCC's involvement in this area could be accomplished while preventing the kinds of abuses that we've discovered were prevalent at the IRS?

I am not an expert on the issues resulting from the IRS review of conservative not-for-profit organizations' tax filings. If the FCC was to modify its rules, promulgated to implement Section 317, to require greater disclosure in political ads, it could potentially have a negative impact on local television and radio broadcasters, as the burden of compliance lies with broadcasters, not the ad sponsor. To the extent broadcasters increase scrutiny or cease to accept political ads under additional regulatory provisions, political speech may be harmed or lessened, raising potential constitutional issues. I would have concerns that the FCC could execute changes to its rules that could pass constitutional muster or enforce such rules in a way that does not lead to further problems.

- f. To the extent that you believe that both Congress and the FCC have the ability to regulate political speech, how would the FCC, under your leadership, proceed with reconciling any differences in approach between the two bodies?

It is my view that it would be in the best interest of the Commission to focus its attention on its extensive list of items in which it must address (e.g., incentive auctions) and avoid involving itself in any area still under considerable debate by Congress.

Senator Dean Heller
Questions for the Record
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1. I have introduced the FCC Consolidated Reports Act in the United States Senate. This bill identifies 16 reports required of the FCC that could be eliminated and it also consolidates 8 separate reports of the FCC into a single report timed to the Congressional calendar. It has passed the House of Representatives by a vote of 415-0.

I believe this is a good government bill, do you agree?

Do you believe this this bill would benefit Congress and the FCC?

Will you as a Commissioner of the FCC work to encourage Congress to pass this common sense legislation?

While I defer to Congress on any particular legislation, I am supportive of the ideas contained in the consolidated report bill and would be happy to work with you and others if I can be of assistance. I believe the Commission, Congress and interested parties can benefit from more thoughtful reports from the Commission and the elimination of unnecessary reporting requirements.

Senator Dan Coats
Questions for the Record
Nomination of Mr. Michael O’Rielly to be
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1. The 21st Century marketplace has created a vibrant and competitive communications and technology sector, but the marketplace only works for established players and new entrants if there is transparency and predictability in the Commission’s processes. The communications and technology sector continues to innovate, and with their innovation comes job creation. The FCC can stop job growth in this sector dead in its tracks with onerous and unnecessary regulations, as well as unpredictability in its processes. I was pleased to see that, in your committee questionnaire, you noted these same concerns.

a. Are there specific regulations that you can point to as barriers to innovation that you wish to focus the Commission’s attention on?

There are certainly a number of areas in which the Commission would do well to remove or refine its unnecessary rules and regulations, and the Commission has looked periodically to do this. I will suggest one such area that generates my extreme interest is the growing list of services or applications that “ride” the Internet, such as VOIP and over-the-top (OTT) video services (some refer to as IPTV). Just recently, the Commission finalized its regulatory fees for FY2013 and included a new fee set for FY2014 for “IPTV licensees” without much clarity over the breadth of the category. I would have concerns if such a fee were applied to OTT services, as it would seem to be counterproductive to the advancement of the Internet and innovation.

2. The spectrum incentive auction is a first-of-its-kind process. If executing the auction was not challenging enough, my understanding is that the FCC also faces a number of technical issues such as not yet knowing what chunks of spectrum TV broadcasters will voluntarily surrender.

a. I understand a process is in place via the task force the Commission has created to work through all these issues, but what obstacles, if any, do

you see what will prevent the Commission from meeting its stated goal of 2014 for the auction?

The spectrum incentive auction, as authorized and required by the Middle Class Tax Relief and Job Creation Act of 2012, will be the most complex auction process ever designed and conducted by the Commission. It will require near perfect execution of the reverse auction, the forward auction, and the repacking of spectrum now allocated to broadcast television services. There are numerous items that could cause the auction to be delayed, but if the Commission conducts an open process, listens and works constructively with all stakeholders, including American consumers, and makes sound decisions, I am hopeful that the 2014 goal can be achieved. While expediency is certainly appropriate given the need for additional spectrum for commercial wireless uses, our paramount concern should be getting this process right.

b. As someone who, until now, has been an “outsider looking in” at the process, can you share your thoughts on how the process is going?

Given my current responsibilities, I have not had the chance to review the complete record in this proceeding. While I have heard a number of concerns from affected parties and certain issues require attention, at this point it appears the Commission, and its dedicated staff, have set the stage for the Commissioners to make the difficult decisions necessary to move forward with the auction.

3. I have heard concerns from my state regarding the regulation of high volume auto-dialer initiated *voice over internet protocol* (VOIP) “broadcasted” calls. My understanding is that these calls can put 10,000 calls per minute onto Indiana’s landline telephone network, by using VOIP technology, in an attempt to get around Indiana’s Do Not Call List. The Commission has, pursuant to its authority under the Telephone Consumer Protection Act (TCPA), worked with the Federal Trade Commission (FTC) in establishing a national Do-Not-Call Registry. The registry is nationwide in scope, applies to all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls.

a. Is this an issue you’re aware of, and if so can you share your views on this topic with me?

I am aware of the issue as both a consumer and an individual who has followed VOIP issues closely for over a decade. In this case, the heart of the

issue is not one based on the newer technology, as the adoption of VOIP can bring tremendous value and benefit to consumers. Instead, this issue appears to be one best addressed by enforcement.

4. On April 29, 2013, my office addressed a letter to then-Chairman Genachowski regarding Non Commercial Educational (NCE) Public Interest Obligation (PIO) television stations and the FCC's process for reviewing complaints concerning underwriting announcements by these stations. The May 17th response from Michael Perko, Chief of the Media Bureau's Office of Communication and Industry Information, ignored my inquiry and included a reference to parity between PBS and non-PBS television stations, an issue my letter did not address. Later research reveals the FCC sent my office was sent an identical form letter that also was sent to Rep. Andre Carson (IN-7) and Senator Inhofe in May 2013, both of whom addressed the parity between PBS and non-PBS stations.

- b. As a Commissioner, will you and your staff read and appropriately respond to inquiries and/or comments from Members of Congress?**

Yes, Members of Congress have my commitment to read and respond accordingly to their views.

- c. Given the current economic environment, many of these NCE PIO television stations remain concerned about the FCC's criteria for underwriting announcements and its process for enforcing these rules. Do you support offering greater opportunities for these stations to engage with the FCC to ensure that they do not violate the rules for underwriting announcements, and that the penalties for inadvertent violations are not unduly severe?**

Yes, I would be supportive of efforts to provide non-commercial educational stations greater clarity and/or guidance, including possible illustrative examples, pertaining to the Commission's rules on underwriting to ensure that these stations are not subject to penalties for inadvertent violations.

Senator Deb Fischer
Questions for the Record
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1) **Statement**

Mr. O’Rielly, former Commissioner McDowell recently called for the federal government to conduct a “bona fide audit” of its spectrum holdings.

Question

As our nation seeks to reallocate spectrum between federal and non-federal users, and between industries, do you support a full audit of all spectrum users and their holdings to guide this process and ensure the proper stewardship of this vital national resource?

By all accounts, there is a spectrum scarcity facing our commercial wireless providers; additional spectrum is needed to meet the demand of consumers. Given that the most likely bands for these purposes are now allocated for federal users, it would seem to make sense to focus any audit on these bands, and I would be supportive of such an effort. Beyond simply auditing the holdings of federal spectrum users, I think it is also important to have a better understanding of the types and frequency of use of different federal spectrum users.

2) **Statement**

Mr. O’Rielly, in 2008 Congress passed the Rail Safety Improvement Act (RSIA) calling on those in the railroad industry to install a new safety technology – known as Positive Train Control or “PTC” – on specific rail lines by the end of 2015.

As I understand the current situation with regard to the FCC’s role in this matter, the railroads have been instructed by the FCC to stand down on the deployment of their PTC antenna structures due to the FCC’s antenna review and permitting processes.

Questions

Are you familiar with this problem and can you share your views with the members of this Committee on the matter at hand?

I am aware of the difficulty faced by railroads in siting towers necessary to meet the requirements of Positive Train Control and I would be supportive of efforts to ease the process.

Do you have any suggestions as to a solution to the problem or a means for expediting the process?

The railroad industry has sought waiver of a height and power limitations. One consideration may be to separate towers into categories based on size and location and provide relief for those in the less sensitive circumstances.

3) **Statement**

I understand that the FCC Wireline Bureau is working on a new model to allocate universal service funds for price cap companies. I also understand that, in some states, substantial numbers of customers will be assigned to satellite services for broadband.

Questions

Do you have information on how many customers in each state will be assigned to satellite services for universal service under the FCC's new model? If so, please forward that information to each Member of the Senate Commerce Committee.

I am not aware of such information at this time.

If you do not have that information, will you commit to obtaining that information and forwarding it to each Member of the Senate Commerce Committee during your first 30 days at the FCC?

If I am confirmed, I would be pleased to provide the Committee with such information as soon as it is practicable.

4) **Statement**

Since coming to Congress, I have taken an interest in the need to get more spectrum for commercial services. I think we need to be smart about how we move forward with spectrum policy

Question

What are your views on how we can do this better?

In my experience, the Federal government can reduce its allocation of spectrum, and therefore it represents the greatest opportunity to identify additional spectrum for commercial wireless services. In addition, there may an opportunity to increase dynamic spectrum sharing, but that in my experience the best path forward is to allocate as much spectrum as possible for flexible commercial use.

Questions for the Record from Senator Rockefeller
Senate Committee on Commerce, Science, and Transportation
Nominations Hearing on Michael P. O’Rielly to be FCC Commissioner
September 18, 2013

1. Prior to the FCC’s adoption of recent reforms to the universal service high-cost fund, I held a hearing in which I pressed the FCC to make sure that those reforms help bring wireless service to rural areas that do not have it now. We also discussed how mountainous terrain and other topographical features can pose additional challenges and costs to wireless deployment in those areas. The Commission has now completed its Mobility Fund Phase One auction to provide support for wireless build-out in rural America. It is my understanding that some prospective bidders faced significant challenges in winning support under the Mobility Fund’s Phase One rules. I know that the FCC is still considering reforms to the method by which it distributes wireless support in the future.

If confirmed, will you commit to a thorough review of this method to be sure that it works effectively for all rural areas, including those areas, like West Virginia, that face topographical challenges?

Yes.

2. On June 12, I introduced legislation with Senators Klobuchar and Blumenthal aimed at preventing bogus companies from cramming charges onto consumers’ phone bills. Consumers have already lost billions of dollars because of wireline cramming. They cannot afford to lose any more.

Could pro-active regulation by the FCC have prevented this massive consumer harm?

While I wouldn’t foreclose additional Commission regulations in this area, I tend to believe that the best mechanism to prevent and stop cramming is through vigorous enforcement actions. Cramming seems to be an inherently fraudulent, unfair and deceptive practice. As such the Commission’s rules already prevent such activities, as do those of the Federal Trade Commission, which has taken a number of actions in this area.

If confirmed, would you commit to working with me to protect consumers from cramming?

Yes.

3. As we continue to move to a more wireless world, we cannot let crammers run from one kind of bill to another. That is why in June I wrote letters to the four national wireless providers asking about their policies for protecting consumers against cramming on wireless bills. As I have expressed in the past, it is important for both Congress and the FCC to be proactive on this issue.

What should the agency do to make sure cramming does not move to other services, such as wireless?

As a general matter, I agree that consumers using any type of service should not be subject to charges on their bill for services they did not actually purchase. Before determining what actions the Commission might take to address cramming on wireless or other services I would first want to know the extent that cramming is in

fact occurring with such services. As previously noted, I tend to support greater enforcement of existing rules to combat cramming over new Commission regulations, which could increase overall costs on all wireless subscribers. I would be supportive of efforts to focus greater attention by the Commission on this issue and, if confirmed, I will look to the Commission's staff and industry stakeholders for data on this topic. In addition, the Commission should work in cooperation with the Federal Trade Commission, which has taken enforcement actions in this area.

4. Last year, I held a hearing that explored the future of the video marketplace, including the emergence of online video. The Committee heard that online video has the potential to be truly transformative, and to lead to greater choice, better programming, and lower prices for consumers. That is why I am concerned by recent reports indicating that pay television providers are seeking to foreclose opportunities for online video services to flourish in the marketplace. It is troubling that some cable operators are entering into agreements that seek to require or encourage media companies to withhold their programming from online video services. To the extent legislation is needed to prevent this possible anticompetitive behavior, I am willing to lead that effort. But I also believe the FCC has some existing authority to combat these practices.

Do you believe that online video can ultimately serve as a competitor to broadcast, cable and satellite?

Yes. It depends how broadly the term “online video” is interpreted, but I think it is a very likely direction the entire video services market may go in the near future.

Do you believe regulatory action can help competition in the video marketplace thrive?
I believe that removing barriers to the development of online video offerings could be helpful and prudent, so long as such efforts are not discriminatory against current providers, do not provide an unfair advantage, and do not unnecessarily interfere in the marketplace.

If confirmed, would you commit to fostering the development of these innovative services and to make sure that they continue to benefit consumers?

Yes.

What actions would you take to make sure usage-based pricing by Internet service providers is not a barrier to online video providers?

I would need further information from all stakeholders and will review developments in this area, but I am not sure that usage-based pricing will develop as a real impediment to online video providers. Today's video consumers want their video content when, where and how they want it; companies that meet this demand will succeed. Incumbent video providers risk strong alienation from consumers if they stand in the way of consumer demand.

5. In the near future, the FCC will be auctioning spectrum in the 600 MHz band that is voluntarily relinquished by television broadcasters. A number of parties, including potential bidders, have asked the FCC not to allow the same interoperability issues in the 700 MHz band to be repeated in the 600 MHz band.

If confirmed, would you commit to making sure that interoperability problems do not occur in the 600 MHz band?

It is my understanding that the Commission's Notice of Proposed Rulemaking for the broadcast spectrum incentive auction makes interoperability one of the five key policy goals along with utility, certainty, interchangeability, and quantity. I would need to review the full record in the proceeding, but at this point, these seem like reasonable goals. In some regards, this issue will need to be part of the overall discussion in determining the appropriate band plan and other important components for the incentive auction.

6. Payphones are a vanishing feature of the American communications landscape. Fifteen years ago, we had more than 2 million payphones across the country, but now we have less than a quarter as many. Despite this decline, they remain a primary link to the communications network for American households without any form of household phone. They are a vital part of keeping Americans connected and, as we saw during Hurricane Sandy, can be a lifeline in times of emergency.

If confirmed, will you commit to reviewing existing payphone policies at the FCC in order to ensure that the Congressional mandate to compensate each and every completed call is met?

As you note, the payphone industry is swiftly being replaced by other technologies, such as wireless phones. If confirmed, I would seek to ensure that the Commission complied with the provisions of the law.

Will you commit to work to ensure that disputes over payphone compensation are resolved in an expeditious manner?

In cases in which the Commission is authorized, the Commission should work to resolve any disputes quickly. I would need further information to determine whether this has been a problem in the past as it pertains to payphone complaints, and if so, the reasons for any delay.

7. As you know, I have long been concerned about the harm caused to kids by violent programming. That is why I have introduced legislation to have the National Academy of Sciences study the impact of violent programming on children's wellbeing. I also have long believed that parents must have effective tools to protect their children from questionable content, no matter how it is accessed. I know the FCC previously studied this issue in 2007 and 2009, discovering significant flaws in TV ratings systems and parental controls. Technology has changed dramatically since the FCC's original studies. Today's mobile devices and online video platforms offer children access to untold amounts of content and create additional challenges to parental oversight.

If confirmed, will you push the FCC to update its 2007 and 2009 reports on media violence and parental control tools, particularly examining the impact of changes in technology on parents' ability to protect their children from questionable content?

I would like to do everything I can to provide families and parents the opportunity to protect their children from unwanted material. The good news is that for many media platforms technology provides amazing new tools for parents in this cause,

especially the development of Internet applications (or apps). If the Commission determines to initiate another study of media violence, I would want the Commission to take a hard look at all the new technology in this space available to help parents and kids.

8. Cybersecurity is one of the most critical national security challenges facing our nation. Both the government and the private sector are under almost constant attack. These attacks cost us billions of dollars every year. The majority of our telecommunications network is owned by private companies. But it is in our national interest to defend our country against our adversaries who use this network to steal our business and government secrets. In July, I introduced a bipartisan cybersecurity bill with Senator Thune that would give the National Institute of Standards and Technology authority to facilitate and support the development of voluntary, industry-led cyber standards and best practices for critical infrastructure.

If confirmed, how would you promote public-private sector cooperation to improve our ability to stop cyber-attacks?

The Commission has limited authority in this area beyond being a conduit between the government and the private sector companies that design, develop, operate and maintain the Internet. To the extent the Commission can promote dialogue and cooperation between the parties with differing views, I would be pleased to help facilitate such activities, while maintaining deference to Congress and other federal entities with greater roles on the issue.

9. As part of the 1996 Telecommunications Act, Congress directed the FCC to regulate media ownership. I remain concerned that broadcast television ownership groups are using arrangements like shared-services agreements to take effective control of TV stations that the FCC's rules say that they cannot own. Reports suggest that these arrangements also affect the marketplace negotiations that set the cost for the carriage of broadcast content.

Would you agree that the FCC should take a hard look at these arrangements to determine if they comply with the spirit of the 96 Act and the FCC's regulations?

Consistent with the requirements of Section 202(h) of Telecommunications Act of 1996, the Commission is obligated to review all of its media ownership rules quadrennially to determine whether such rules are necessary, reflecting added competition in the market, and to repeal or modify any regulation it determines to be no longer in the public interest, and that is what I would do, if confirmed. I would need further information and comment from all stakeholders to ascertain whether any party is circumventing the law.

10. The FCC has been tasked by Congress with ensuring that all parties in retransmission consent negotiations conduct those negotiations in good faith.

How would you propose that the FCC judge good faith in such negotiations?

I believe that the Commission's overall authority in the retransmission consent process is very limited given the provisions of the law. The Commission has a two-part framework to determine violations of the good faith negotiation contained in the statute. The Commission has an open proceeding from March 2011 that seeks comment on a number of suggestions and ideas relating to its good faith negotiations

framework. I would need to review the full record before providing additional comment.

Would you agree that setting forth more detailed standards for what is good faith in these negotiations would provide more certainty to the parties negotiating these deals, and would help protect consumers from prolonged blackouts of programming that they pay for each month?

During my time as a congressional staffer, I have heard from some parties that have advocated for greater requirements on what qualifies as good faith negotiations and what should be permitted under the retransmission consent process. Others have advocated that the Commission take a different course by completely leaving the entire negotiating process to the private sector to resolve. I would need to review the full record of the Commission's open proceeding to provide more information on which perspective would provide greater assistance to consumers and would be consistent with the statute. The issue has generated significant interest from Members of Congress on both sides of the aisle. I would, of course, faithfully implement any Congressional requirements, should Congress pass additional legislation on the topic.

Do you support the FCC requiring that consumers receive refunds when there is a prolonged blackout?

I would need further information from all stakeholders to make an assessment. Under current procedures, consumers generally pay for multichannel video programming on a per-package basis rather than on a per-channel basis. Beyond whether it is advisable, it may be difficult to determine the value a consumer would be "owed" under a refund policy, if the Commission chose to impose such a requirement.

11. In retransmission consent negotiations, when broadcasters and pay television providers fail to reach agreement, screens go dark, and viewers are stuck bearing the brunt of these corporate disagreements. Under the Communications Act, broadcasters hold their licenses to use the airwaves "in the public interest." Broadcasters are in a position of public trust.

Do you believe broadcasters' pulling their signal in this way is consistent with the public interest?

As a consumer myself, I sympathize tremendously with American consumers that are often caught in the middle of negotiations between media companies and content providers. No one supports television screens going dark. While broadcasters have the obligation to act in the public interest, the statute also provides broadcasters with retransmission consent rights. To the extent that broadcasters negotiate in good faith but do not come to contractual agreement with multichannel video program distributors, the statute provides broadcasters with the right to withhold programming. I would welcome further legal analysis on this matter.

During the Time Warner/CBS dispute in August, Time Warner Internet customers were blocked from accessing free programming made available to all Internet users on

CBS.com. Do you believe this online blocking is in conflict with broadcasters' charge as part of their FCC licenses to serve the public?

I would need to hear from all relevant stakeholders on this matter, but I will suggest the blocking of Internet content is extremely shortsighted by content providers, in this case television broadcasters. American consumers are both savvy and fickle when it comes to Internet content. Stunts such as these tend to undermine consumer trust and loyalty that is hard to restore. Moreover, it also raises legitimate questions whether the retransmission consent process is being abused by broadcasters.

12. Several stakeholders have suggested that the FCC's rules on local broadcast market exclusivity (specifically, the rules on network non-duplication, syndicated exclusivity, and sports blackout) are market altering in the context of retransmission consent negotiations. You have professed support for free competition in the communications market.

Do you believe that these rules affect market-based carriage negotiations between broadcasters and pay TV providers?

I do believe that these rules have an impact on the negotiations. Indeed, the Commission's open proceeding on retransmission consent seeks input on whether the rules do have an impact on the negotiations, whether the rules are already covered by contract negotiations between television networks, content providers and local broadcasters, and whether elimination of such rules would have any practical impact.

Would you support reforming or eliminating these rules?

I would want to hear from all stakeholders, but I would welcome the opportunity to consider whether these rules should be eliminated.

13. In Section 628 of the Communications Act, the FCC has been tasked by Congress to monitor and prevent unfair methods of competition or unfair or deceptive acts or practices in the cable marketplace. In your testimony, you state that you favor "clear rules of the road" to help consumers and industry.

Is this the sort of instance where you favor the FCC adopting such rules of the road to implement this statutory responsibility?

Section 628 is part of the statute and I would comply with the law. To the extent there are discussions on how best to change the statute, I would have to defer to Congress on that matter. A number of parties have argued that after 21 years, the 1992 Cable Act provisions should be reviewed.

14. In your testimony you speak of eliminating "unnecessary regulations."

Can you name five such regulations that you believe are unnecessary?

In my testimony, I stated that, if confirmed, I would focus on implementing and enforcing the applicable statutes enacted by Congress, work with my colleagues to address the pressing issues and bring certainty to the market, and look for opportunities to reduce unnecessary regulations or those that impose excessive financial burdens. I believe it is premature for me to specifically name regulations I would eliminate before arriving at the Commission and having the opportunity to

review the intent and effect of existing rules. As a general matter, I believe one area that is an obvious place to start are the numerous and often overlapping reporting requirements placed on communications providers. I would also look closely at pending requests for forbearance to determine whether such requests have merit and whether the rules for which forbearance is being sought remain necessary. I would want to conduct a comprehensive review of existing rules before providing the committee with any particular suggestions.

How would you propose that the FCC decide what is or is not a necessary regulation? Generally, if a regulation is not squarely within the authority and responsibility of the Commission, has outlived its usefulness, is unneeded to meet the requirements of the statute, or imposes excessive costs then it should be considered for elimination. One test some people have suggested to use is one already contained in the statute. Specifically, Section 11 of the Communications Act of 1934, as enacted as part of the Telecommunications Act of 1996, requires the Commission to conduct a biennial review of all Commission rules relating to telecommunications services and determine if they are no longer necessary. Some parties have sought to extend this review to video services, and I would be very open to exploring this option. In addition, a number of parties have sought to expand the Commission's Initial Regulatory Flexibility Analysis for small businesses and its Paperwork Reduction Act analysis to better incorporate a fuller cost-benefit analysis in the Commission's findings to determine whether a proposed regulation is excessively expensive. Further, some have suggested applying these analyses to Commission rules already enacted to determine a more accurate cost-benefit basis. These are just a few ideas that could further the goal of an efficient and effective Commission.

15. Section 1 of the Communications Act says that one of the fundamental purposes of the FCC is to promote universal availability of communications to all Americans. I firmly believe that this universal service obligation today includes extending access to quality broadband nationwide. I am concerned about how we are going to meet this obligation with consumers in our rural areas, where there is often only one provider with a monopoly on service.

What does the universal service principle in Section 1 mean to you?

Universal service is a fundamental and longstanding principle of communications policy. It is embedded in many provisions of current law, and if confirmed, I commit to faithfully execute and enforce those provisions. I think the Commission's mission to ensure universal service is strong, but it must be done in a thoughtful manner and with recognition to the differences in our vast nation.

How do you expect the FCC to achieve that principle through its regulatory mission?

The Commission made a number of reforms to its Universal Service funding program for high-cost areas in December 2011. These changes bring the program – now known as the Connect America Fund – better in compliance with the requirements of the statute and remove a number of hidden subsidies. In addition, the Commission focused the program on bringing broadband services to U.S. towns and areas that do not currently have service. Together, it is my view that the

Commission can continue push for greater efficiency, stability, and affordability within its Connect America Fund, while keeping rural consumers as its main focus. The FCC's high-cost fund provides critical support for build out in areas like rural West Virginia and South Dakota. Do you agree that the high-cost subsidy is necessary for broadband deployment in those areas?

I will seek to faithfully execute and enforce the provisions of the statute, in which the universal service provisions are included. It is my understanding that the Connect America Fund established by the Commission seeks to target funds to areas that would not otherwise have service absent a subsidy, while also removing support in areas that are served by an unsubsidized competitor. This seems like an appropriate framework and, if given the opportunity, I look forward to reviewing the current plans for further implementation of the Connect America Fund to make sure support is utilized in those areas that would not otherwise be served absent Universal Service support.

16. The voluntary incentive auctions created by the Middle Class Tax Relief and Job Creation Act of 2012 are essential to funding FirstNet. Designing those auctions is a complex task, and Congress deferred those decisions to the FCC, the expert agency in spectrum auctions. The FCC has to get the auction right—both to encourage participation and to raise adequate funds for timely construction of the FirstNet network.

Do you agree that providing sufficient funding for FirstNet is an essential component of the incentive auctions?

Yes, Congress assumed the Middle Class Tax Relief and Job Creation Act of 2012 would result in a successful spectrum incentive auction. In fact, Congress prioritized funding received from the incentive auction and other provisions in the law to include funding for broadcaster relocation costs (\$1.75 billion), state and local implementation grants (\$135 million), FirstNet (\$7 billion), and public safety research (\$100 million).

All three sitting FCC Commissioners have committed to act quickly to begin these auctions and to avoid unnecessary delay. Will you make that same commitment?

Yes. It is my hope that the spectrum incentive auction can be designed and conducted in the very near term, but conducting the auction *successfully* is more important than a speedy conclusion.

17. There is a strong argument that Section 629 of the 1996 Telecommunications Act fostered the type of set-top box innovation that we saw from companies such as TiVo, which encouraged cable companies to respond with their own digital video recorders.

Do you believe that Section 629, and the industry-wide rules the FCC issued pursuant to that section, were an important driver in this innovation?

I am not in a position at the current time to make this assessment. The provisions of Section 629 of the Communications Act of 1934, with which I am very familiar, have been subject to numerous legal and regulatory challenges since its enactment in the Telecommunications Act of 1996. Separately, one of the greatest advances in the developments of digital video recorders was the successful outcome of legal challenges by various content providers over potential copyright violations.

What should the FCC do today to make the marketplace for set top boxes even more competitive?

While it may not be advantageous for the set top box industry, the advancement of Internet services may be one direction to bring greater benefits to consumers. A number of video providers have examined the option of eliminating set boxes altogether and moving to server based systems. Further, the deployment of over-the-top video offerings – as part of a package of channels, on a per channel-basis, or on a per-program basis – may alleviate the need for set top boxes.

18. Opponents of the FCC's Open Internet rules have argued that the antitrust laws should be sufficient to police the market in case bad behaviors occur.

Is it not true that antitrust laws focus on harm to competition and do not encompass other public interest concerns and that under the Communications Act, Congress has charged the FCC with broader public interest duties including, for example, encouraging deployment of new communications services to all Americans and a diversity of voices?
I agree that the structure and standards imposed under antitrust law are different than those in the Communications Act of 1934.

Do you believe antitrust litigation under the Sherman Act provides more or less certainty that is crucial to investment and job creation?

There are pluses and minuses to any particular structure. The Commission's rules are only effective if they are enforced. Moreover, one needs to take into account the overall impact of the Commission's rules, which impose costs on every provider and every consumer versus only going after cases resulting from certain practices.

How do after-the-fact enforcement actions – which can be very costly to the parties – affect investment incentives for small businesses, innovators, and entrepreneurs?

Depending on the circumstances and if acted on quickly, after-the-fact enforcement actions could be more beneficial to affected participants as they focus on the direct behavior in question rather than attempting to anticipate all of the potential bad behavior that could arise. Moreover, an enforcement model can minimize the one-size-fits-all problem of pro-active Commission rules, which can impose significant compliance costs on all industry participants and their customers.

19. Recent reports suggest that data caps are having a chilling effect on the “over the top” video market. For example, at least one company has reportedly suspended its entry into home video services out of concerns that broadband providers can exempt their own Internet-based video offerings from their data caps. The Department of Justice is apparently looking into this. On the one hand, broadband providers need to manage their networks. And consumers who use more bandwidth capacity should pay more. That's fair. But on the other hand, they can be anticompetitive. If a broadband provider sets these caps really low, they are preventing their customers from watching online video. This makes it harder for consumers to replace their pay television service with new online services.

Should the Commission also actively monitor data caps to make sure that they are not employed in an anti-competitive, anti-consumer manner?

The Commission should keep a watchful eye on developments and changes in the industry, as it should with most issues in the communications area.

Would you support the FCC collecting [simple] data on how Internet service providers implement and administer caps to study any possible consumer harm?

I have heard from a number of people who have expressed concerns over the Commission's data collection process in many instances. While I wouldn't rule out such data collection, I would be reluctant to endorse added data collection of Internet Service Providers without having an opportunity to discuss with relevant stakeholders or having a detailed cost analysis and an impact analysis on the industry participants.

Should the FCC be concerned about discriminatory data caps, and if so, what steps should the FCC take to prevent these caps from limiting competition?

In my opinion, it may be too early to know the impact of data caps on consumer behavior, but as stated above, the Commission should keep a watchful eye on developments and changes in the industry.

20. According to the FCC's 2012 Report on Cable Industry Prices, there is evidence that cable rates have risen at a rate in excess of inflation. The report noted that rates for expanded basic cable service increased by 3.7 percent during 2010, compared to an increase of 2.5 percent in the Consumer Price Index. Over time, this increase has been more substantial. In fact, from 1995 to 2010, rates increased 144 percent, compared to the Consumer Price Index increase of 44 percent. One of the main reasons Congress passed the Cable Act 20 years ago was to bring rates down.

In your opinion, why, after 20 years and several new pay television entrants, do rates continue their dramatic yearly increases?

In my opinion cost of video services has increased for a number of reasons, including the increased cost of programming, the expanded channel offerings and the added cost of regulatory requirements.

Some have argued that this continued rapid rise in cable rates suggests that the pay TV market is not sufficiently competitive, and have proposed that the FCC re-examine its "effective competition" standard under Section 623 of the Communications Act. Would you support the FCC taking a fresh look at this standard to make sure it is accomplishing Congress's intent in the underlying statute?

The fact that prices have increased does not mean necessarily that the market is not competitive. The added competition in this industry segment has also increased the leverage of content providers in their negotiations with video providers, thereby increasing the pressure on prices. Today, most consumers have a number of options for video services from which to choose and new innovative Internet video offerings are developing rapidly. In terms of the FCC's effective competition standard, the statute provides a multi-pronged, detailed definition of effective competition. To the extent the Commission is not complying with the law, I would want to hear from all stakeholders on the matter.

21. Some phone and Internet service providers have suggested that because of the high-cost of deployment of IP networks, rural areas may have to settle for wireless as a solution to IP phone service in the future.

Do you think rural Americans are entitled to the same quality of service and prices for voice and broadband as Americans in our cities?

Generally, yes. I am also mindful of the high cost to deploy service in many remote areas and the lower return on investment for communications providers in areas with very low population density. This is precisely why Congress established the universal service program in Section 254 of the Communications Act. But in establishing that section I note that Congress used very specific language indicating that consumers in rural areas should have access to services that are “reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

How can the FCC work to make comparable, affordable service in rural areas a reality?

The need to make services available in rural areas on a reasonably comparable and affordable basis is precisely why the Commission needs to run a very efficient and effective Universal Service high-cost fund (now known as the Connect America Fund).

22. Consumers are forced to pay for so many channels, when they watch only a few.

Do you believe cable a la carte legislation would benefit consumers?

I would have to defer to Congress on legislation, but I have serious concerns that Congressionally-mandated a la carte offerings would result in the desired outcome of lower costs or greater choice for consumers.

Would you support elimination of rules, like the broadcast basic tier requirement, that might inhibit a la carte?

Yes, I would want to hear from all stakeholders but removing government barriers to the market moving to an a la carte pricing regime seems to make sense. However, this may require a change in current law and would have to defer to Congress on that matter.

What about limiting bundling and tying of video programming, to the extent they prevent market-based a la carte options?

To the extent that bundling or tying of video programming is done through private commercial contracts it seems something that should be left to the marketplace and not interfered with by government. It is my view that a la carte programming will only develop if the market and consumers are willing to accept it.

23. Requiring disclosure of who is sponsoring broadcast advertisements, both commercial and political, goes back to the 1920s and the Federal Radio Commission. Subsequently this authority was rolled into the FCC when it was established in 1934. Specifically, Section 317 of the Communications Act of 1934 directs the FCC to make sure that all sponsored television content carries with it an on-air disclosure of the entity that paid for such content. In effect, it says that broadcasters have to let their viewers know when somebody has paid to broadcast material on

their stations. Telling the viewing public who is paying for advertisements is not a controversial idea, and in fact it is what consumers expect and deserve. And earlier this year, the GAO recommended that the FCC update all of its sponsorship ID rules, given that many of them are decades old and not reflective of the television landscape today.

Will you commit to carefully considering this issue once you are confirmed, after consulting with the legal experts at the FCC and not prejudging this issue?

If confirmed and this issue comes before the Commission, I will consult with appropriate legal experts to comply with the law.

24. As you know, the Telecommunications Act of 1996 was designed to facilitate competition, in order to promote innovation and lower prices for consumers. A critical part of that Act was the requirement, under Sections 251 and 252 of the Communications Act, that incumbent telephone providers must interconnect with new competitive providers on fair terms—with state and federal regulators looking on—so they would not exploit their monopoly position to obstruct competition. Today, the telecommunications industry is going through dramatic changes. Old, circuit-switched telephone networks are giving way to new, IP-based technologies. The Commission has previously determined that the Congress intended for these interconnection obligations in the Communications Act to be technology neutral in order to preserve the fundamental principles of the Communications Act, which you professed to support during your confirmation hearing.

Would you commit to closing the FCC's open rulemaking on IP-to-IP interconnection and establishing clear rules of the road for such negotiations?

Changes in the form of technology do not change the importance of the need for networks to interconnect. At the same time, historical regulatory constructs in place to ensure interconnection for older technologies do not necessarily make sense as technology progresses. This is an important open issue before the Commission in which many comments have been filed. I look forward to carefully reviewing the record and meeting with stakeholders on this subject. Most recently, the Commission has sought comment on the possibility of initiating a number of trials or pilots regarding the "migration" to IP networks. One of the proposed IP trials the Commission proposed would focus on interconnection of IP networks and the resulting policy issues. I would be supportive of these efforts and would be interested in the outcome of any trials.

Parties have raised concerns that the present free market system for completing peering and transport agreements is not working properly, and that some parties may be refusing to enter into such agreements for anti-competitive reasons. Would you agree that the FCC should monitor these developments closely?

I would need further information on this to make an accurate assessment. It would seem reasonable to observe such developments closely to the extent such information is publically available.

Senator Maria Cantwell
Questions for the Record
Nomination Hearing
September 18, 2013

Questions for Mr. O’Rielly

Question #1 - Spectrum Policy

Mr. O’Rielly, I have a series of questions on spectrum policy.

- We hear about the spectrum crunch when it comes to licensed spectrum. Is there also a spectrum crunch when it comes to unlicensed spectrum?

I have heard and read these concerns from a number of technology companies operating in this space. I would need to further information from all stakeholders to make a more accurate assessment.

- Does different propagation characteristics of the 600 megahertz, 900 megahertz, and 2.4, 3.5, and 5 gigahertz spectrum bands enable certain uses and precludes others?

In general, spectrum bands can have different propagation characteristics based on frequency. I would need further information from all stakeholders to make an accurate assessment to whether unlicensed spectrum users face similar limitations.

- If so, given the characteristics and restrictions of these different spectrum bands, is it important for innovators and users to have access to unlicensed spectrum at different frequencies, including spectrum below 1 gigahertz?

It is important not to underestimate the creativity and innovative capabilities of those developing devices to operate in unlicensed spectrum bands. In my experience, the individuals and companies utilizing unlicensed spectrum have been able to do more with less than other spectrum users and they continue to push the boundaries on what is possible with any particular spectrum band or device.

- Do you support the use of the broadcast white spaces for unlicensed use?

Yes.

- Does the Commission have the authority it needs to preserve a sufficient amount of spectrum in the 600 megahertz band for unlicensed use in the guard bands in each and every market?

It is my understanding that the Middle Class Tax Relief and Job Creation Act of 2012 provides the Commission with sufficient flexibility to allow unlicensed spectrum uses in the 600 MHz band under certain circumstances. In fact, the Commission has proposed as part of its incentive auctions Notice of Proposed Rulemaking to provide a number of opportunities for unlicensed spectrum in the 600 MHz band. In particular, the Commission is taking comments on allowing unlicensed use in channel 37 of the television broadcast band, any so-called “guard bands” created as part of the overall

band plan for reallocating the reclaimed broadcaster spectrum, spectrum used by wireless microphones, and any residual spectrum remaining from the band plans conversation from six MHz television channels to five MHz commercial wireless services channels.

- The FCC required the development of a geo-location database to minimize the potential interference of unlicensed devices operating in the broadcast white spaces with over-the-air television broadcasts. Do you see geo-location databases being used in other unlicensed bands as a means to facilitate spectrum sharing?

Geo-location databases now being established and operated for unlicensed use in the white spaces portion of the television bands may be helpful in promoting greater spectrum sharing in other bands in some circumstances. I would need further information from all stakeholders to make a more accurate assessment, but I am open to exploring this issue further with you and your staff.

- Do you believe current 3G and 4G wireless devices were designed to operate in a spectrum sharing environments where there may be some interference present from other wireless devices? Going forward, is that something the technology community and standards organizations need to examine and address?

At this point, it is my understanding that the licenses held by those offering 3G and 4G wireless devices protect from unwanted or unauthorized interference, but I would need further information from all stakeholders to make a more accurate assessment.

- Do you believe it is technically and operationally feasible for commercial wireless providers to share several hundred megahertz of spectrum with Federal users?

Depending on the circumstances, spectrum sharing may help provide additional commercial wireless opportunities in some instances. In general, cleared spectrum for private sector use is preferable to sharing between federal and non-government users. I would like to see the Commission and the National Telecommunications and Information Administration work to clear additional spectrum now allocated to federal users without jeopardizing the safety or mission of federal users.

- As a practical matter, does the Commission's spectrum holding proceeding need to be completed before it completes its 600 megahertz auction rules?

For all practical purposes, yes. To the extent the Commission determines to alter its current spectrum holding review procedures, which it should very carefully consider before placing any increased limitations or restrictions on carriers, it is probably helpful and perhaps necessary to do so before the incense auction rules are finalized to promote a smooth and organized auction.

Question #2 – Native American Broadband

The FCC's Office of Native Affairs and Policy was established in 2010 to promote the deployment and adoption of communications services and technology throughout Indian country. Since then the Office has provided technical support and a critical point of contact for Indian tribes nationwide on a variety of FCC initiatives.

- If confirmed, will you continue to support this Office and its activities in Indian country?

To the extent the Office of Native Affairs and Policy is determined to be helpful to relevant stakeholders and run in an efficient manner I would open to continuing its service, after consultations my other commissioners, if I am confirmed.

The National Broadband Plan describes how the broadband deployment rate on Indian lands may be as low as 5 to 8 percent. Due to their remote locations many Indian reservations are either unserved or underserved as companies focus broadband deployment efforts on more profitable, densely populated areas.

- What role do you envision for the FCC in encouraging broadband deployment on unserved and underserved Indian lands? Are there some specific things that might be achieved through the Universal Service Fund?

I am extremely sympathetic to the problems faced by those living on tribal lands. The Commission's Universal Service Reform Order provides an additional infusion of funding for broadband deployment on tribal lands – separate and apart from its other funding reform efforts. If I am confirmed, I will examine additional ways to improve broadband availability on tribal lands.

Question #3 – Universal Service Fund Reform

Mr. O'Rielly, philosophically when it comes to reforming the contribution mechanism of the Universal Service Funds do you think it should be revenue based or connection-based?

The Commission has an open proceeding on this issue and is taking comments on the potential of moving away from a revenue-based collection method and moving toward other alternatives. There may be statutory limitations to what the Commission can do without additional legislative authority provided by Congress. I would need further information to analyze all alternative collection-based methods, but I would be concerned by any method that dampens Internet usage or increases overall costs for American consumers.

Questions for the Record
Senator Barbara Boxer
Senate Committee on Commerce, Science, and Transportation
Hearing on the Nomination of Mr. Michael O’Rielly to the FCC
September 18, 2013

Question #1

As you know, there is an ongoing debate regarding whether the contribution base for the Universal Service Fund should be expanded. USAC recently issued a decision that would effectively reclassify certain applications riding over the top of the broadband network and require them to contribute to USF. In light of this decision, I am concerned that USAC may soon begin assessing many types of over-the-top applications.

- As Commissioner, would you work with Congress on USF contribution reform to ensure that the Commission acts cautiously and deliberately on this issue?

Yes, you have my commitment to do so. I have deep interest in those services and/or applications that “ride” on the Internet and share your concerns over any effort to capture such providers or innovators.

Question #2

As you know, Congress requires the FCC to review its media ownership rules every four years to determine whether they uphold the core ideals of competition, localism, and diversity of media. These principles are fundamental to our democracy. Increased consolidation of our nation’s broadcast radio and television stations can lead to less local news coverage and fewer voices participating in the media.

I am particularly concerned that women and ethnic and racial minorities are underrepresented in ownership of broadcast radio and television stations. Women own just 7 percent of broadcast radio and television stations, and ethnic and racial minorities own only 5 percent of television stations and 8 percent of radio stations.

- What steps would you take to ensure the Commission completes a timely review of its media ownership rules?

The Commission is obligated by statute to complete its media ownership review every four years and I am deeply disappointed that the Commission has failed to complete its 2010 review. I believe the Commission has not done a good job of always keeping to statutory deadlines, including for the quadrennial review, and if confirmed, I will do everything in my power to ensure that the Commission meets its deadlines as required by Congress.

- How would you ensure that the media ownership rulemaking is based on a comprehensive and unbiased examination of the effect the rules have on ownership diversity?

It is my understanding that prior to releasing its Notice of Proposed Rulemaking pertaining to the 2010 quadrennial review the Commission conducted eleven studies on various aspects relating to media ownership, including studies on competition, diversity, localism, and minority and women ownership. These studies were also subject to a six-month peer review process and the comments from peer review were available for additional critique by all stakeholders, including the American people. To the extent this process is not sufficient or effective, I would be open to suggestions on how to improve it.

The Commission, which was required by the Third Circuit Court in 2011's Prometheus Radio Project v. FCC to complete a study on the effects of consolidation on women and minority ownership, outsourced their work to a third party, the Minority Media & Telecommunications Council. The MMTC delivered its truncated study in May with the caveat that it should only be considered as one element in the Commission's proceeding, not as dispositive evidence fulfilling the Court's mandate and not addressing the concerns of the Third Circuit's opinion.

- Do you feel that the MMTC study fulfills the Commission's mandate under the Third Circuit's opinion or that, as MMTC itself cautioned, it should only be taken as one piece of evidence in the Commission's deliberation?

In addition to the MMTC study, it is my understanding the Commission's conducted a separate study focused on minority and women ownership issues prior to releasing its NPRM as required by the statute. I would need to further information from all stakeholders to make an assessment on the sufficiency of the MMTC study in meeting the court's directive.

Question #3

Some Internet service providers that have traditionally offered unlimited plans are now implementing pricing schemes that limit the amount of data a customer can use, or charge customers for using data beyond a predetermined amount. Today, more than half of broadband Internet subscribers in the United States are subject to some form of bandwidth cap or usage-based pricing.

Data caps and usage-based pricing have the potential to significantly impact how networks are designed and used. Furthermore, when bandwidth caps are paired with exemptions for certain content providers, the barrier to entry for new services increases, leading to fewer new products and competitors entering the market. Such exemptions to bandwidth caps may also violate the FCC's Open Internet Order, which established that fixed broadband providers may not unreasonably discriminate against lawful network traffic.

- Do you feel that the Commission should study the effect that bandwidth caps have on online video providers and consumer choice?

I tend to agree with former Chairman Julius Genachowski, who argued that a tiered business model for the broadband services may be beneficial. Generally, the Commission should be extremely knowledgeable within reason about all of the

services under its authority. I am not sure this situation warrants an official study, but if confirmed, I would have to hear from all stakeholders on the matter.

- Is there an approach the FCC could adopt in order to minimize the negative effects of usage-based pricing?

If confirmed, I would need further information on the possible positive or negative effects of usage-based pricing.

- What other actions do you feel the Commission should undertake to promote the open Internet?

While I welcome the views of others on the matter, I believe the Internet represents the greatest human invention we will ever see in our lifetimes. I do not believe that the Internet – given its dynamic and disruptive tendencies – lends itself well to being managed or controlled, and therefore, regulators should apply an extremely light touch in this space. Of course the Commission’s authority to regulate in this area is the subject of ongoing litigation in the DC Circuit and my actions as a Commissioner will be guided by the decisions reached in that case.

Question #4.

Increasingly, our nation’s telephone companies are transitioning from traditional copper networks to wireless and Internet-based services. Last year, AT&T asked the FCC for permission to transition to an all IP-based fiber network on a trial basis in certain areas. In addition, Verizon recently filed a request with the FCC to discontinue traditional copper telephone service and offer wireless connectivity instead to certain communities affected by Hurricane Sandy.

At the same time, the Commission has acknowledged that rural consumers are experiencing significant problems receiving long distance or wireless calls on their landline telephones. These problems appear to be attributable to the increased use of IP-based least-cost routing providers.

- What can the Commission do to ensure that such interconnection and reliability problems do not become more prevalent as our nation’s telephone networks transition to wireless and IP-based services?

The Commission has sought comments on whether to establish a number of trials or pilots to examine the impact, including the public policy issues, from greater use of IP networks. I would be supportive of such trials and think they could be helpful in understanding the future of communications. It is my understanding that the Commission’s Technology Transitions Policy Task Force also recently announced that a public workshop will be held on October 15, 2013, at the FCC looking at these transition issues – specifically the transition from wireline to wireless-only networks and the transition from copper to purely fiber all-IP networks. I look forward to reviewing the results of this workshop, future trials and any other efforts of this Task Force.

- Should the reliability, interconnection, and universal service principles that currently apply to traditional phone service also be applied to IP-based voice services?

It is my hope that if the Commission moves forward with IP network trials, which I would support, the related public policy issues will be fully explored as well. One issue that needs to be examined is whether the Commission needs to expand its telephone rules to IP networks or whether the marketplace, including increased competitive pressures, can best resolve disagreements between commercial entities offering communications services.

Question #5.

The E-Rate program, which has furthered the goal of bringing broadband Internet access to schools and libraries all over the country, is underfunded. Last year alone, the program had to turn away more than \$2 billion in applications from schools and libraries nationwide, including many institutions in California. Experts project that demand for E-Rate support will continue to grow as wireless devices are increasingly introduced in the classroom.

Moreover, the President recently announced the ConnectED initiative, which sets the goal of connecting 99% of public schools in the United States with next-generation broadband Internet access – at speeds no less than 100 Mbps and with a target of 1 Gbps. The President’s proposal tasks the FCC with modernizing and leveraging the E-Rate program to achieve this goal.

- What would you do as a Commissioner to ensure that the E-Rate program continues to expand and bring affordable, high-speed broadband to schools and libraries?

I am open to examining mechanisms to modernize the E-rate program and bring greater broadband Internet access speeds to schools and libraries, and if confirmed, I will work with my fellow commissioners to do so. As part of this process, I think it is important to examine ways to refocus the E-rate program on Internet access and find a way to offset any additional costs from such modernization.

- How would you propose funding and implementing the President’s ConnectED proposal?

The Commission’s open proceeding on modernizing the E-rate program seeks comments on ways to fund any expansion, should the Commission determine to do this, and I would need to review the record and talk with all relevant stakeholders to understand the impacts of any particular reform. The President’s ConnectED proposal offers one way to fund any expansion of the process that has raised a number of concerns from outside parties that need to be fully reviewed.

Question #6.

Unleashing spectrum for wireless broadband is critical to our economy. However, the incentive auctions exclude many low-power television stations and translator licensees from participating. It is not clear what will happen to translator and low-power broadcast television stations at the conclusion of the repacking process which will follow the reverse auction. Over

four hundred of these stations exist in California and serve a large and diverse portion of the state.

- How should the rules for the upcoming incentive auctions address the operation of translator and low-power television stations?

The Middle Class Tax Relief and Job Creation Act of 2012 does not provide any protection or special considerations for translator stations or low power television stations. In the case of low power television stations, those operating such stations have been on notice that their stations are subject to interference, as they operate on a secondary basis. Accordingly, the Commission will have to work with all stakeholders after the incentive auction to try to accommodate as many translators and low power television stations as can be permitted, taking into account the band plan adopted, the amount of spectrum allocated for television broadcasting in any market, and the number and location of broadcasters that remain.

The upcoming spectrum auction also raises issues for stations close to the Mexican border. In 2012, Congress passed a bill requiring that the FCC coordinate with our counterparts in Canada and Mexico to ensure that the same issues that plagued broadcasters during the digital television transition won't happen again.

- How will the Commission further coordination efforts with their counterparts in Mexico to ensure that our borders will not face interference or signal issues that could potentially disrupt broadcasters' signals and viewers' access to their channels?

As you note, the Commission is required under the Middle Class Tax Relief and Job Creation Act of 2012 to coordinate with Mexico and Canada to the extent that television broadcasters are repackaged into a smaller spectrum band, and if confirmed, I would ensure the Commission complies with the law. More importantly, failure to conduct such coordination would likely have an impact on the overall success of the incentive auction and the ability of some Americans to view the signals of broadcasters that remain post-auction. The Commission's open proceeding on this matter raises the coordination issue, including seeking comments on when best to conduct and complete the technical components of border coordination.

Question #7.

The Rail Safety Improvement Act of 2008 requires the installation of Positive Train Control (PTC) – a collision avoidance technology that relies on radio transmission – on many passenger, commuter, and freight rail lines by 2015. Ensuring the successful deployment of this life-saving technology is a high priority for me. Unfortunately, some rail operators have experienced delays in the FCC's review of their spectrum applications, and many passenger rail operators are struggling to access sufficient spectrum at an affordable cost.

- How do you propose the Commission work with rail operators to overcome these challenges so that PTC can be implemented nationwide?

I am aware of a number of issues regarding the implementation of PTC and, while I am not privy to any details, it is my understanding that the Commission is working closely with the railroad industry and federal partners, including the Federal Railroad Administration (FRA) to resolve the challenges. I would need further information from all stakeholders to make a more accurate assessment and commit to looking into the issue if confirmed.

Question #8.

The Commission's Lifeline program allows qualifying low-income individuals and families access to phone services that allow them to stay in touch with their loved ones, employers, and emergency providers. This program has recently come under attack for allowing participants to access wireless as well as wireline service.

- Do you believe that the Commission has a role in ensuring that low-income Americans have access to services on mobile devices?

I support a complete top-to-bottom review of the Lifeline program to ensure that American ratepayers are receiving the greatest consideration for their investment. A number of parties, including many Members of Congress, have supported reform of the program, including whether the entire program should be continued. To the extent that changes are made to the program, I would seek to ensure that they be made in a technology-neutral manner.

Question #9.

The last Satellite Television Extension and Localism Act incentivized broadcasters to offer programming options to underserved customers who would otherwise lack access to local news. Congress will have the opportunity over the next year to address shortfalls in the current broadcast market and guarantee that customers have access to reasonably-priced programming that meets their needs.

- What positive changes would you like to see Congress make when it considers STELA reauthorization next year?

I defer to Congress on possible legislative changes to STELA, and if confirmed, I would offer my assistance to your office or others interested.

Questions for the Record
Senator Mark Pryor
Senate Committee on Commerce, Science and Transportation
On the Nomination of Michael O’Rielly to be a Commissioner of the FCC

While the FCC has implemented many components of the 21st Century Communications and Video Accessibility Act, there are concerns that some programming still is not fully accessible, including programming such as news and other video clips.

- How will you work to ensure that this law is fully implemented and all Americans are able to access all forms of communication?
- Can you make a commitment to ensure that not only do providers meet the letter of this law, but also the spirit by ensuring that closed captions and video descriptions are of sufficient quality?

I believe the Commission has the obligation to fully and faithfully implement and enforce the provisions of applicable laws enacted by Congress. The 21st Century Communications and Video Accessibility Act is an example of a communications law in which I was not involved. Therefore, I would be open to learning from you and others integrally involved, and all relevant stakeholders, the intent behind certain provisions.

The voluntary incentive auctions will be a very large and important undertaking for the FCC.

- As a Commissioner, what principles would you use in evaluating incentive auction proposals?

First and foremost, it would be my obligation, if I were confirmed, to follow the statute enacted by Congress. My general approach will be to ensure the process and the auctions are conducted consistent with four basic principles:

- (1) Complete the process as soon as practicable;**
- (2) Bring the greatest benefits to American consumers;**
- (3) Ensure fairness for all stakeholders involved; and**
- (4) Maximize revenues for the Federal government.**

- What would a successful incentive auction look like to you?

Consistent with my four principles, a successful incentive auction would: reallocate a significant portion of spectrum allocated to television broadcasting for nationwide commercial wireless services; generate sufficient revenues to meet and exceed our obligations under the law, including the establishment and funding of FirstNet; ease the transition for broadcasters willing to voluntarily return their broadcasting licenses for reverse auction compensation; and provide a smooth repacking process for those broadcasters remaining on the air.

As you know, the Communications, Technology, and the Internet subcommittee held a hearing on the state of wireless communications. While the panelists did spar over a few issues, there was consensus that more spectrum is needed for commercial use. To that end, the FCC is preparing to auction several spectrum bands that are currently allocated for Federal use.

- How would you further efforts at the FCC to ensure more spectrum is made available to the private sector?

In my experience, the Federal government can reduce its allocation of spectrum, and therefore it represents the greatest opportunity to identify additional spectrum for commercial wireless services. In addition, there may be an opportunity to increase dynamic spectrum sharing, but that in my experience the best path forward is to allocate as much spectrum as possible for flexible commercial use.

- Do you have any thoughts you would like to share regarding innovative ways, such as financial incentives, to encourage federal users to make more of their spectrum available for commercial use?

On behalf of a number of Members of Congress I have drafted various legislative mechanisms over the years to facilitate the reallocation of spectrum from federal users to commercial spectrum users. I would, of course, defer to Congress on legislation to further this goal, but I believe further action may be in order and would welcome the opportunity to be helpful to you or your staff, if possible. Options include providing financial incentives and/or disincentives for federal users to hold spectrum that is not necessary to carry out their missions.

Your biography shows your long interest in telecommunications issues, and I have heard from both staff members and outside interest groups of your deep knowledge of this subject matter. I also trust that as a staff member, you understand the importance of an agency's responsiveness to Members and staff.

- Do you have any priorities that you would like to pursue or advance at the FCC?

You are very kind to indicate the positive comments from internal and external sources. The Commission was created by Congress and should be respectful to the concerns raised by Members. My first priority will be to comply with the applicable laws enacted by Congress, including provisions establishing a spectrum incentive auction and ensuring thoughtful implementation of its Universal Service provisions. One area I am particularly interested in is the application layer of Internet services (i.e., those services or applications that "ride" the Internet).

**Questions for the Record – Senator Amy Klobuchar
Senate Commerce, Science and Transportation Committee
Nominations Hearing FCC/FTC
September 18, 2013**

Mr. O’Rielly – Consumers deserve to keep and use cell phones they have already bought—it’s just common sense. That is why I introduced the Wireless Consumer Choice Act with Senators Lee and Blumenthal. This bipartisan legislation directs the Federal Communications Commission (FCC) to take action to ensure consumers can “unlock” and keep their phones when they switch carriers. If they are barred from making that choice because they would have to buy a new phone, it is not true competition. Competition can lead to lower prices, new innovations and improved service. The National Telecommunications and Information Administration (NTIA) also recently filed a petition encouraging the agency to take up this issue.

- Should you become a Commissioner at the FCC, will you commit to working with consumers, carriers, NTIA, and the Library of Congress to address unlocking?

Yes. If I am confirmed to be an FCC Commissioner, I will work with all stakeholders to ensure that consumers who have met the obligations of their contracts continue to have the right and ability to unlock their wireless phones. Given that overturning the poor decision by the Librarian of Congress may require a legislative solution, I would defer to Congress on the best mechanism to preserve consumer unlocking.

Mr. O’Rielly – Consumers in the U.S. are increasingly reliant on text messages, photos and live video calls as smartphones and tablets continue to dominate the mobile market. However, many are frustrated that these rich means of communications cannot be used to contact authorities in an emergency. The importance of emergency services is why I serve as the co-chair of the Senate N-G-911 caucus. The FCC should be commended for the important steps already taken to accelerate the development and deployment of NG 911 technology, but more work needs to be done.

- I would like to hear your thoughts about what you think the FCC can and should do to pro-actively promote the adoption of NG 911 and advanced emergency services?

Successful development and deployment of NG911 will require coordination on a number of important aspects, including funding, research, and educational efforts. The Commission can and should work with all stakeholders in implementing those relevant provisions of law already enacted, provide advice to Congress if additional legislation is warranted, and make appropriate changes to Commission rules – as needed – in a technology-neutral manner that does not stifle innovation. One of the benefits of the Commission’s focus generally on the “transition” to all-IP networks is to explore the policy issues involving NG911 systems.

Senator Begich Questions for the Record
To be presented to Federal Communication Commission
Commission Nominee Mr. Michael O’Rielly

Mr. O’Rielly, for several years many members of Congress, myself included, have expressed concerns about the need to improve the FCC’s Transformation Order on Inter-carrier Compensation (ICC) and Universal Service Fund (USF) including the Quantile Regression Analysis model, in order to bring greater regulatory certainty for rate-of-return carriers.

- How would you go about pursuing such improvements and create reasonable certainty?

I am aware that the Commission has made several modifications to the USF reform order to address concerns expressed by rural carriers. To the extent that additional modifications or corrections to the FCC’s Universal Service Reform Order are necessary and would provide greater certainty to recipients, I would be open to reviewing any such suggested changes.

- How would you go about updating the universal service program to ensure that rate of return carriers, like price-cap carriers, are eligible for USF based on the provisioning of broadband services even where customers don't take legacy voice services?

The Commission’s Universal Service Reform Order takes a major step to expand the scope of services covered to include broadband services. There are a number of parts to be implemented from that order and my conversations with a number of Members of the Committee highlight the need to take a closer eye with regards to certain aspects of the order, particularly support provided for rate-of-return carriers. It is my understanding that the Commission’s Wireline Competition Bureau recently sought comment on the specific issue you raised, the ability of rate-of-return rural carriers to receive high-cost support for customers who only purchase a broadband connection. Should I be confirmed, I commit to looking into the record on this issue and taking steps to address the concern as appropriate.

- Are you willing to pursue additional modifications to the USF/ICC waiver process to make it less expensive, more useable and overall more realistically workable for small carriers?

Yes, the waiver process should work for all stakeholders.

- Will you commit to work with me to explore alternative approaches to high cost reform that will provide sufficient and predictable support for Alaskans who simply seek equal access to the communications tools available to the lower-48?

Yes.

The main result of USF reform appears to adjust support from states like Alaska, which is a state unparalleled in cost to access, build, and deploy making it uniquely high cost to serve, by

shifting support to less costly areas in the Lower 48. Alaska has already lost \$28 million per year in annual high cost USF support as compared with 2011 even though Alaska has the most significant network deployment challenges of any state.

- If the FCC continues on its path for mobile support, with nationwide auctions in which Alaska providers compete with the rest of the country on a cost per person or roadmile basis, Alaska could likely see what is currently \$105 million in support for CETC networks fall to about \$5 million per year, based on previous auction results. A 95% cut would be disastrous for Alaska and end any hope for comparable wireless voice or broadband service in rural Alaska. As FCC Commissioner will you work with my office to see that the FCC does not reduce Alaska support levels further?

Yes, Alaska and her people deserve sufficient funding support to meet the goals and obligations contained in the statute, but not one penny more. This must also be done in a manner consistent with the overall size of the Universal Service funds. If confirmed, I would need to understand better the particulars of the data points you highlight and hear from all stakeholders, but I would welcome the opportunity to work with your office on the matter.

- Do you believe there are any additional steps the FCC can take to ensure greater consistency between its regulations and the regulations or programs of other federal agencies?
 - For example, are there things the FCC can do to allow for a more careful consideration of how its proceedings and regulations impact the Rural Utilities Service's financing programs?

During my time as a congressional staffer working on communications policy, I have been extremely troubled by the lack of coordination between different federal agencies and their respective rules, especially the interaction and lack of consistency between Rural Utility Service funds and Universal Service funds. This is partly caused by divided congressional committee jurisdiction and the authorization process. This situation should be addressed, but it may require legislation to do so, and I would have to defer to the Congress on that aspect of the equation.

- Are you willing to pursue modifications to the contribution mechanism that would make all of the Universal Service system's programs more sustainable for the future? Any thoughts on how to do that?

Yes, the Universal Service program's contribution mechanism needs to be addressed in a manner that is fair for everyone: providers, recipients, and American consumers. The Commission has an open proceeding on this matter and I would need to review and hear from all stakeholders before making further suggestions.

- Regarding the “IP transition” do you think it's important to preserve the statutory principles relating to the protection of consumers, promotion of competition, and assurance of universal service to all Americans in this process? How do we do that?

Yes, regardless of the types of technology involved, it is important for the Commission to facilitate principles relating to the protection of consumers, promotion of competition and universal service. However, it is not certain that regulation is necessary to achieve those objectives. It is my hope that if the Commission moves forward with IP network trials, which I would support, the related public policy issues will be fully explored as well. One issue that needs to be examined is whether the Commission needs to expand its telephone rules to IP networks or whether the marketplace, including increased competitive pressures, can best resolve disagreements between commercial entities offering communications services.

- How can the Commission best ensure that rates for essential voice and broadband services in the highest cost rural areas remain affordable to consumers?

The need to make services available in rural areas on a reasonably comparable and affordable basis is precisely why the Commission needs to run a very efficient and effective Universal Service high-cost fund (now known as the Connect America Fund).

- What are your views on data caps or data tiers on wired and wireless broadband and their impact on the growth of online video?

I tend to agree with former FCC Chairman Genachowski , who is quoted as stating that “usage-based pricing could be a healthy and beneficial part of the ecosystem.” If confirmed, I would want to keep a watchful eye and keep an ongoing dialogue with stakeholders operating in this space.

- Federally recognized tribes have provided numerous comments in FCC dockets stating that broadband and advanced telecommunication services on tribal lands are insufficient. As FCC Commissioner will you commit to working to improve access and deployment of telecommunication services on tribal lands? Will you have an open door policy for tribes interested in meeting with you to discuss these issues?

Yes and yes.

- What is your level of working experience with tribal nations, and in rural communities?

During my time as a congressional staff in the U.S. Senate, I have been exposed to the difficulties in bringing communications to sparsely populated lands in the U.S., such as rural communities or on tribal lands. My work extends outside the communications area, like U.S. farm policy reform, to cover a number of circumstances in which U.S. public policy directly or indirectly impacted rural

America. I believe these instances will prove invaluable, if I am confirmed to be a Commissioner to the FCC.