Written Question Submitted by Hon. John Thune to Hon. Tom Wheeler

Question 1. **Following the reclassification of broadband Internet access service as a Title II public utility, Chairman Wheeler indicated that the FCC will propose new privacy regulations. The Federal Trade Commission (FTC) already has extensive experience in protecting consumer privacy, and consumers and business already have experience in applying the FTC's privacy rules and precedents; the Commission has virtually no such experience beyond the very narrow confines of rules implementing Sec. 222. Why would the Commission create a new, likely inconsistent set of rules rather than adopting the FTC's privacy protections? Given that the Commission's rules will only apply to BIAS providers, isn't there a significant likelihood that functionally identical activities on a smartphone will be governed by completely different rules based upon who is providing the service?**

Response: The Federal Communications Commission (Commission) has a long history of protecting the privacy of consumers when using communications networks. Throughout the 1980s and 1990s, the Commission set guidelines concerning incumbent telephone companies' use and sharing of customer information.[1] Then, in 1996, Congress enacted Section 222 of the Communications Act providing statutory protections to the privacy of the data that telecommunications carriers collect from their customers.[2] The Commission adopted implementing rules for Section 222 and as industry practices and consumer expectations have changed it has updated those rules. Today, the Commission is tasked by Congress with protecting the private information collected by telecommunications, cable, and satellite companies in Sections 222,[3] 631,[4] and 338[5] of the Communications Act. Consequently, the Commission has significant experience in protecting the privacy of consumers.

When reclassifying broadband as a telecommunications service, the Commission chose not to forbear from Section 222. This decision was made in recognition of the need to ensure broadband customers have privacy protections. The Notice of Proposed Rulemaking (NPRM) that I circulated begins the process of adopting rules under Section 222 for broadband customers.

The NPRM focuses on transparency, choice, and data security. This approach is consistent with

[1] *See Amendment of Section 64.702 of the Commission's Rules and Regulations*, Final Order, 77 FCC 2d 384 (1980) (*Computer II*), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Commc'n Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Phase I, 104 FCC 2d 958 (1986); *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corp.*, Report and Order, 9 FCC Rcd 4922, 4944-45, para. 45 (1994); *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 1388, 1419-25, paras. 73-86 (1995); *Furnishing of Customer Premises Equipment by Bell Operating Telephone Companies and the Independent Telephone Companies*, Report and Order, 2 FCC Rcd 143 (1987), *recon. on other grounds*, 3 FCC Rcd 22 (1987); *aff'd, Ill. Bell Tel. Co. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989).

[2] 47 U.S.C. § 222.

[3] 47 U.S.C. § 222.

[4] 47 U.S.C. § 551.

[5] 47 U.S.C. § 338(i).

the Commission's history of protecting privacy, the FTC's guidance on privacy best practices as well as its law-enforcement work, and various sector-specific statutory approaches. The NPRM is tailored to the particular circumstances that consumers face when they use broadband networks and with an understanding of the particular nature and technologies underlying those networks.

The FTC has jurisdiction over edge providers. The NPRM, however, is focused solely on broadband networks, which are not the same as edge providers in all relevant respects. For example, consumers can move instantaneously to a different website, search engine, or app, but once they sign up for broadband service, consumers can scarcely avoid the network for which they are paying a monthly fee. As the FTC has explained, Internet service providers are "in a position to develop highly detailed and comprehensive profiles of their customers – and to do so in a manner that may be completely invisible."[6] Broadband providers thus have the ability to capture a breadth of data that an individual streaming video provider, search engine, or e-commerce site does not.

As the expert agency on communications policy issues, the Commission is well positioned to ensure consumers have the right level of control over the information they share with their broadband provider. But, we also recognize that we have complementary authority to the FTC in this space and the Commission is determined to continue its close working relationship with the FTC. In fact, the Commission and the FTC recently entered into an updated consumer protection Memorandum of Understanding (MOU). In the MOU each agency recognizes the others' expertise and agreed to coordinate and consult on areas of mutual interest.[7]

Question 2. **I understand that you are close to finalizing action on an order that would address the standalone broadband issue that many in Congress have written to you about over the past several years and also adopt some new limits and other measures related to universal service support for rate of return providers. Do you commit to work quickly and collaboratively with this committee and with affected stakeholders to the extent any adverse or unintended consequences arise out of the reforms?**

Response: Last year, I pledged to you and other Members of this Committee that we would bring forth a solution for the next phase of universal service modernization: reforming support for "rate-of-return" carriers. As the result of months of collaborative efforts by Commissioners Clyburn and O'Rielly and their staffs, we recently adopted a bipartisan Order to fulfill that promise.

The Order sets forth a package of reforms to address rate-of-return issues that are fundamentally intertwined—the need to modernize the program to provide support for stand-alone broadband

[6] Federal Trade Commission, Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers at 56 (2012), https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf (2012 FTC Privacy Report).

[7] *See* FCC-FTC Consumer Protection Memorandum of Understanding (2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-336405A1.pdf.

service; the need to improve incentives for broadband investment to connect unserved rural Americans; and the need to strengthen the rate-of-return system to provide certainty and stability for years to come. The Order will help to ensure that federal universal service funds are spent wisely, and for their intended purpose, and takes concrete steps to bring broadband to rural Americans who remain unserved today

This bi-partisan effort was aided by the rate-of-return carriers themselves. Working through their trade associations, they engaged with Commissioner Clyburn, Commissioner O'Rielly and me in a productive manner. We are pleased that NTCA and USTA have supported the result. I look forward to working with you, the Committee staff, and all stakeholders as we implement these reforms and continue modernizing the universal service high-cost program – as well as other components of the Universal Service Fund – to ensure that all Americans have access to robust voice and broadband services.

Question 3. **Ensuring that rural and urban consumers have access to reasonably comparable services at reasonably comparable rates is a fundamental statutory principle of universal service. Are you confident that the standalone broadband solution you are poised to adopt will do that – specifically, will it allow rural consumers to get standalone broadband at rates reasonably comparable to their urban counterparts? If not, what more do you think the FCC will need do to ensure such comparability?**

Response: In the *April 2014 Connect America FNPRM*, the Commission unanimously articulated four general principles for reform to address the stand alone broadband issue. Specifically, these four principles were that new rules should (1) provide support within the established budget for areas served by rate-of-return carriers; (2) distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so; (3) support broadband-capable networks in a manner that is forward looking; and (4) ensure no double-recovery of costs. I believe the package of reforms in the recently adopted Order will resolve the stand-alone broadband issue and update the rate-of-return program consistent with those principles.

Question 4. **I have heard concerns that the methodology used in the 2014 order to determine the local rate floor for voice service has led to rates in some rural areas, including parts of South Dakota, that are not reasonably comparable to those services provided in urban areas. Given this concern, when do you plan to act on the petition for reconsideration filed by several rural associations regarding the rate floor methodology? Do any other Commissioners have thoughts regarding this matter?**

Response: In the 2011 USF/ICC Transformation Order, the Commission unanimously adopted reforms to make universal service a fairer system for all consumers and businesses. The Order includes a phase-out of excessive subsidies for basic phone service, which allowed some phone companies to charge their customers as little as $5 a month while average urban, suburban, and even some other rural consumers, were paying over three times that amount. The Commission determined it was inappropriate to use limited federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability between urban and suburban rates and rural rates, as required by Congress. The reforms gradually eliminate these excessive

subsidies to level the playing field for all consumers and contain the cost of the program, which is funded by universal service fees paid by consumers. Commission staff is currently reviewing the record in response to the Application for Review you reference.

Question 5. **Last July, the FCC released an omnibus declaratory ruling on the Telephone Consumer Protection Act (TCPA). TCPA litigation has increased dramatically in the last decade. What considerations did the Commission give to the impact its ruling would have on businesses, both large and small, that need to reach their customers for legitimate business purposes?**

Response: The Commission gave full consideration to the impact its ruling would have on all petitioners, including businesses of all sizes. Consistent with our rules, the Commission sought public comment on all of the petitions addressed in the June 2015 Declaratory Ruling. Based on this record, the Commission granted relief to some businesses, including a petitioner who provided time-sensitive healthcare robocall alerts. Where the Commission was compelled by the statute and its own precedent to deny relief, the ruling nevertheless provided clarity and a roadmap for compliance.

Question 6. **Many small businesses seek to improve their efficiency and customer relationships by providing information to their customers through the use of modern dialing technologies. The FCC's recent interpretation of the term "autodialer" in the TCPA declaratory ruling, however, could sweep in any number of modern dialing technologies. Other than using a rotary phone, what other technologies can small businesses feel comfortable using without exposing themselves to TCPA litigation risk?**

Response: The Commission's June 2015 Declaratory Ruling provides a roadmap for small businesses who wish to comply with the TCPA.

The June 2015 Declaratory Ruling did not offer a new interpretation of the term "autodialer." Instead, the ruling merely applied existing precedent regarding the TCPA's autodialer definition to address specific requests for clarification. Moreover, while the Commission was not asked to address specific types of equipment, the Commission provided additional clarity regarding relevant factors in determining what equipment constitutes an autodialer, including the amount of effort it would take to modify a piece of equipment to have the capability to dial random or sequential numbers.

Question 7. **By establishing liability after a mere one-call exception, the Commission's ruling creates a perverse incentive for incorrectly-called parties to allow or even encourage incorrect calls to continue, rather than notify the calling party of the error. These continuing incorrect calls thus become potential violations and the basis for monetary penalties sought through litigation. What will you do to repair this perverse incentive?**

Response: The Commission does allow robocallers an opportunity to remain free of TCPA liability in the event of an incorrectly-called party. Specifically, the June 2015 Declaratory Ruling affords robocallers an opportunity to discover a reassignment after one incorrect call if

best practices, including checking reassigned-numbers databases, do not reveal a reassignment. The Commission's decision on this point provides callers greater protection from liability than some federal courts have held, which is that all robocalls to a consumer other than the subscriber are subject to TCPA liability under the statute as written by Congress. Moreover, as the Commission stated in its declaratory ruling, the TCPA requires that robocallers obtain the subscriber's consent and places no obligation on consumers who may have inherited a phone number to notify the robocaller of the reassignment.

Question 8. **Has the Commission considered providing a safe harbor for a calling party that reasonably relies on available customer phone number records to verify the accuracy of a customer's phone number?**

Response: The Commission recently considered providing such a safe harbor, but ultimately declined to adopt one. Specifically, the Commission concluded that, in light of the TCPA's statutory language as drafted by Congress and relevant federal case law, robocallers must obtain the subscriber's consent and a robocaller cannot avoid liability for calling the wrong consumer by arguing they intended to call someone else. As the Commission noted in its ruling, several tools exist for robocallers to detect when a number changes hands. In addition, our ruling grants robocallers a one-call further opportunity to discover a reassignment in the event of an incorrectly-called party. The Commission will continue to encourage further development of best practices so that businesses trying to reach their customers do not make unwanted robocalls.

Question 9. **The pay TV set-top box NPRM proposes to expand the scope of the term "navigation device" to include "software or hardware performing the functions traditionally performed in hardware navigation devices." On what theory does the Commission base this interpretation and expansion of the statutory term's scope to include software? Does software that is not integral to the operation of a navigation device fall within the scope of Section 629?**

Response: The Commission's interpretation of "navigation device" is based upon a number of sound legal theories. As explained in the NPRM, "[w]e believe that when Congress adopted Section 629, it intended the term to include software because set-top boxes have run software since before 1996." NPRM at n.65. The NPRM also notes that "Congress recognized this in the STELAR, which called for a study of downloadable software approaches to security issues previously performed in hardware." NPRM at para. 22. Moreover, as I stated in the hearing, everything in the world is moving toward software, and in a software world, we cannot consider the kind of equipment that the statute talks about and not consider software. Finally, we are in the process of developing a record on this and other issues, and I look forward to the record that develops in response to this issue.

Question 10. **How does the NPRM propose or contemplate preventing third party devices or applications from adding unapproved or additional advertising alongside MVPD service content? How does the NPRM propose to protect and secure interactive MVPD**

programming and services when accessed through third party devices or applications? How does the NPRM propose to enforce such protection and security measures?

Response: Today, the Commission is not aware that such ads are a problem on third party devices, such as TiVo, Smart TVs, or when you access Netflix on a tablet. Nor do we have rules governing the contracts that advertisers enter into with these parties. Nevertheless, we seek comment on these issues and any actions we can take to mitigate such concerns, including through the proposed certification process as well as the extent to which copyright law may protect against these concerns.

As for protecting secure interactive programming and services, the new proposed rules would create a framework for providing device manufacturers, software developers and others the information they need to introduce innovative new technologies, while at the same time maintaining strong security, copyright and consumer protections. Our NPRM proposes to let MVPDs choose the security system or systems that they wish to use to protect content. The content protection and security that the MVPD chooses would be enforced just as they are today—in the private marketplace consistent with contracts, copyright law, and the MVPD's power to revoke a compromised device's ability to receive service. The proposal, which is based on the way that content protection is administered today, states that to license the content protection that is necessary to decrypt multichannel video programming from a MVPD, the third party must certify that it will honor copy protection limits and prevent theft of service.

Written Question Submitted by Hon. Roger Wicker to Hon. Tom Wheeler

Question 1. **Chairman Wheeler, I have heard from some of my constituents who are competitive carriers that changes in the Universal Service Fund have harmed the competitive landscape.**

- **Can you please provide me with an update on the implementation of the USF high-cost program/Connect America Fund?**

Response: In 2011, the Commission voted unanimously to expand rural broadband access by modernizing the Universal Service Fund. The Commission took an inefficient program for delivering telephone service and created the Connect America Fund (CAF) to support expanded broadband connectivity in rural America. These reforms have already delivered significant benefits. Over the next five years, CAF is poised to invest $9 billion and leverage private investment to deliver broadband to 7.3 million rural Americans. In addition, universal service reforms have dramatically reduced waste within the program. Furthermore, last September, I circulated an Order for the consideration of my fellow Commissioners that would address the framework for the CAF Phase II competitive bidding process. In December, I circulated an updated draft Order that addressed concerns raised by other Commissioners' offices.

Last year, I pledged to the Members of the Committee that we would bring forth a solution for the next phase of universal service modernization: reforming support for "rate-of-return" carriers. As the result of months of collaborative efforts by Commissioners Clyburn and O'Rielly and their staffs, the Commission recently adopted a bipartisan Order to fulfill that promise. The Order sets forth a package of reforms to address rate-of-return issues that are fundamentally intertwined—the need to modernize the program to provide support for stand-alone broadband service; the need to improve incentives for broadband investment to connect unserved rural Americans; and the need to strengthen the rate-of-return system to provide certainty and stability for years to come. The Order will help to ensure that federal universal service funds are spent wisely, for their intended purpose, and takes concrete steps to bring broadband to the rural Americans who remain unserved today. In addition, a Further Notice included with the Order seeks comment on additional reforms that would further guard against waste.

Notably, underlying all of these reforms to the high-cost program is the shared principle that we should limit the use of ratepayer funds to support service in an area that is served by an unsubsidized voice and broadband provider. Prior to making the Phase II offer of model-based support to the price cap carriers, the Commission conducted a robust challenge process to refine the Commission's data on which areas of the country were already served by voice and broadband, and removed those areas from eligibility. Similarly, the rate-of-return reform order adopts a process to determine which rate-of-return areas are served by an unsubsidized competitor and reduce support for those areas.

- **Have you done any studies on the impact of competition in unserved and underserved areas related to changes in the USF?**

Response: Twice a year, the Commission collects deployment and subscription data from all broadband providers through its Form 477. This data informs both our universal service policies as well as our statutory mandate to regularly determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

- **Are there any other proceedings currently at the FCC which relate to promoting competition in rural areas?**

Response: As mentioned above, I have circulated an Order that would address the framework for the CAF Phase II competitive bidding process. As currently drafted, this item would establish a process for companies to compete for funding to serve high-cost areas that lack broadband. Simply put, competition between providers means that finite universal service funding will be used efficiently to deliver the best possible solutions.

Question 2. **In your judgment, is existing wireless coverage at risk of being stalled or even reduced without continued USF support?**

Do you support a Mobility Fund Phase II that provides support for BOTH preserving existing service where it is not otherwise economically feasible as well as expanding mobile broadband to areas that are unserved?

Response: Wireless providers continue to build-out networks and expand coverage. However, unserved and underserved communities also continue to exist across the nation. USF provides an important role in expanding wireless networks to those areas of the country.

In 2011, the Commission proposed to provide ongoing financial support to promote mobile broadband and high quality voice services in areas where such services cannot be sustained or extended absent federal support. In 2014, the Commission sought comment on how universal service funds should be targeted. This inquiry was in light of the substantial roll-out of 4G LTE by many of the country's mobile networks. The Commission proposed to retarget Mobility Fund Phase II support to preserve mobile service where it only exists today due to support from the universal service fund and to extend 4G LTE service to areas where it does not exist.

Commission staff is currently reviewing the record on this inquiry to consider possible next steps for a Mobility Fund Phase II.

Written Question Submitted by Hon. Ron Johnson to Hon. Tom Wheeler

Question 1. **What is the purpose of the cybersecurity "assurance" meetings that the FCC plans to conduct with companies?**

Response: Effective cyber risk management procedures are crucial to maintain the reliability and resiliency of our networks. In 2014, following issuance of the NIST Cybersecurity Framework for assessing cyber risk management, the FCC challenged the communications industry to lead the way in creating a new framework to guide the relationship between the FCC and industry to best address cybersecurity challenges for this critical infrastructure sector, with the goal of individual companies proactively managing cyber risk. In response, a broad-based group of expert stakeholders, the Communications Security, Reliability and Interoperability Council (CSRIC), recommended a comprehensive plan for putting this new approach into action. One of the group's key recommendations was for individual companies to brief the FCC periodically on a voluntary and confidential basis about cyber risks and their approach to managing these risks. The Commission is now considering a Policy Statement, which, if adopted, would implement the CSRIC recommendation by outlining a process for holding these meetings.

a. What do you expect to get out of these meetings?

Response: The voluntary meetings will enable the FCC to work with industry to identify best practices, especially among smaller companies that have fewer resources to devote to cyber defenses. These meetings will also help to identify relevant trends and challenges in this rapidly evolving environment that can further aid in cyber risk management.

b. Why aren't these meetings being conducted under the Department of Homeland Security's Protected Critical Infrastructure Program?

Response: The Commission works closely with DHS to assess the preparedness of the telecommunications sector for a wide variety of contingencies. Under the Policy Statement under consideration, these meetings would be complementary to the DHS cybersecurity efforts. The Commission is working with DHS on an administrative arrangement to make use of the Protected Critical Infrastructure Information (PCII) program. In the interim, and in light of the importance of cybersecurity for this critical infrastructure sector of the Nation's economy, the Policy Statement under consideration describes the confidentiality and other protections that the Commission would apply to such meetings while the Commission continues to work with DHS to make use of the PCII program.

c. Are you planning to conduct in-depth cybersecurity audits of these companies?

Response: No. We intend these meetings to be a conversation on companies' cyber risk management practices; there is no "correct" or "minimum" standard against which companies will be measured. The Policy Statement under consideration makes clear that those companies that elect to participate in such meetings have discretion over what information they present about their cyber risk management practices and how they present it.

Question 2. **I understand that in January 2014 the FCC budgeted $3 million for telecommunications relay services (TRS) research and development, and that a portion of that funding was used to support a MITRE Corporation study on Internet Protocol Caption Telephone Service (IP CTS).**

a. If that study is complete, will you provide a copy?

Response: The MITRE Corporation (MITRE) has performed studies to assess the accuracy, latency and associated usability of Internet Protocol Caption Telephone Service (IP CTS) devices and services, as well as alternative technologies that could augment IP CTS for people with hearing loss. In part, these studies are intended to determine the feasibility and effectiveness of handling calls through automated means, to reduce the need for third party communication assistants. Our goal is to develop methods of handling TRS calls that can result in savings to the TRS Fund while at the same time ensuring that such calls are functionally equivalent to voice telephone calls, as required by the Communications Act. Specifically, MITRE has submitted to the FCC preliminary test results assessing a sample of current and alternative speech recognition technologies and qualitative and quantitative measures for device and caption performance. MITRE also has provided preliminary results from controlled user assessments, and established a baseline of usability metrics based on MITRE's assessments of IP CTS devices and services. These activities provide qualitative and quantitative measures for device and caption performance.

The FCC is evaluating MITRE's results to ascertain the extent to which new advances in speech recognition technology technologies and processes can improve IP CTS so that these services become more functionally equivalent to telephone services used by hearing people without the need for human intervention during these calls.

b. If it is not complete, when do you expect it to be done?

Response: Phases 1 and 2 of the study have been substantially completed and the FCC is reviewing and analyzing the preliminary results thus far to determine whether additional studies are necessary.

c. Do you plan to put the study out for public comment or review?

Response: It is the Commission's intention to make MITRE's final research results publicly available.

Written Question Submitted by Hon. Ted Cruz to Hon. Tom Wheeler

Question 1. **In the Open Internet Order, the Federal Communications Commission (FCC) revised the definition of "public switched network" to mean "the network that . . . use[s] the North American Numbering Plan*, or public IP addresses,* in connection with the provision of switched services" (See para. 391 (emphasis added)). Although the FCC disclaimed any intent to "assert" jurisdiction over the assignment or management of IP addresses by the Internet Numbers Registry System (see *id.* at note 1116), the FCC's decision to equate telephone numbers with IP addresses nonetheless gives the FCC statutory jurisdiction over IP addresses as a matter of law. Over 20 years ago the FCC concluded that Section 201 of the Communications Act gave it plenary jurisdiction over telephone numbers, because "telephone numbers are an indispensable part" of the duties that section 201 imposes on common carriers (See Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, FCC 94-79, ¶ 8 (1994)). IP addresses are likewise an indispensable part of the duties the FCC imposed on ISPs under section 201, including the duty to connect to "all or substantially all Internet endpoints".**

How can the FCC uphold the public interest requirements in section 201 of the Act if it refuses to assert its statutory authority over an indispensable part of the public switched network?

If the FCC believes regulation of IP numbers used to connect end points on the public switched telephone network is unnecessary, why hasn't it forborne from the regulation of telephone numbers?

Response: In the Open Internet Order, the Commission changed its own definition of the term "public switched network" in the context of Section 332 of the Communications Act, to include IP addresses as well as telephone numbers. The Commission concluded that "[r]evising the definition of public switched network to include networks that use standardized addressing identifiers other than NANP numbers for routing of packets recognizes that today's broadband Internet access networks use their own unique addressing identifier, IP addresses …" (Emphasis added) (See para. 391), but did not suggest that the Commission asserted authority over IP addresses, either pursuant to Section 201(a) or pursuant to Section 251(e) (the source of Commission authority over numbering issues pursuant to the Telecommunications Act of 1996). In fact, the Commission forebore from Section 251(e)—the provision that gives the Commission authority over telephone numbers. IP addressing—in contrast to telephone numbers—is already governed by IANA, (the Internet Assigned Numbers Authority), a department of ICANN, that is responsible for the global coordination of IP addressing, among other coordination functions.

Written Question Submitted by Hon. Roy Blunt to Hon. Tom Wheeler

Question 1. **Thank you for your immediate response following the hearing regarding my concerns with the timeliness of replies from the Commission to Members of the Senate, and your commitment to improve response times.**

In addition to timeliness of responses, what steps can you take to better account for the concerns raised by Members of the Senate regarding the policies pursued at the Commission?

I support an open and transparent process at the Commission and I have encouraged my staff to work cooperatively to address the concerns of Members of the Senate regarding the FCC's policy decisions. I recognize that there will always be disagreements concerning the outcome of Commission votes with regard to various policy-based decisions. That is one reason why we add all comments from members of Congress to our hearing records – to ensure that we have adequately considered this information as we engage in the administrative rulemaking process.

We also strictly adhere to the Administrative Procedure Act to make certain that all parties have an equal opportunity to comment as we engage in rulemakings. I am always available to members of this committee to personally discuss our work here, and I routinely take phone calls and answer a broad number of letters related to the Commission's work. I also have directed the Commission's staff to provide routine briefings and technical support to members and their staff.

Written Question Submitted by Hon. Kelly Ayotte to Hon. Tom Wheeler

Question 1. **I am a strong supporter of the upcoming incentive auction and hope for the successful outcome that we all intended in passing the Spectrum Act. However, after speaking with broadcasters from New Hampshire, I have heard concerns that the broadcast relocation fund could ultimately prove insufficient to reimburse local TV stations the costs they incur as part of the repacking process.**

Do you have a plan in place should the $1.75 billion relocation fund fall short? Understandably, we will not precisely know the final numbers until the auction is complete, but how do you foresee the Commission responding if the funds prove to be insufficient?

Response: At this point, we have no reason to believe that the $1.75 billion Broadcaster Relocation Fund will be insufficient to cover broadcasters' relocation costs. In order to ensure the sufficiency of the fund, we will optimize the final broadcaster channel assignments to minimize relocation costs. This optimization will: (1) maximize the number of stations assigned to their pre-auction channels; and (2) minimize reassignments of stations with high anticipated relocation costs, based on the most accurate information available. These steps, taken together, will help to ensure that the $1.75 billion Reimbursement Fund is sufficient to cover broadcasters' relocation costs and that the Fund is disbursed as fairly and efficiently as possible.

Should the $1.75 billion be insufficient, I will notify Congress as soon as this becomes clear. The amount was set by the Spectrum Act and Congress would need to take action to change it.

Question 2. **While I look forward to the broadcast incentive auction that begins on March 29, I would like to further explore reimbursement concerns. I have a constituent who has built a wireless microphone business from the ground up. His business plays an important role in the vitality of his local community – whether it is for plays at the University of New Hampshire, productions at the Rochester Opera House, or even a speech by the President. This local business has established itself as a source for dependable wireless microphone equipment for nearly 20 years and is relied upon for its services in New Hampshire.**

My constituent's business was nearly bankrupted during the 2010 auction of the 700 megahertz band, which necessitated replacing half of its equipment – costing approximately $30,000. After purchasing brand new equipment, he also has found that he is able to use it well after its life expectancy. Despite this investment, he faces the same dilemma again with the forthcoming auction.

Has the Commission considered a solution that fairly reimburses wireless microphone providers and looks to replace equipment displaced from the band as an unintended consequence of the 600 megahertz auction?

What can be done to ensure small businesses, such as those in the wireless microphone community, do not have to shutter their doors as a result of the spectrum auction?

Response: The Commission understands that wireless microphone operators provide an important service that many consumers rely upon. While the Spectrum Act does not provide the Commission with authority or funding to reimburse wireless microphone operators for the cost of any changes in equipment as a result of the auction, the Commission has adopted several orders to accommodate both licensed and unlicensed wireless microphones after the auction. In the 2014 Incentive Auction Report and Order, the Commission provided additional opportunities for wireless microphone operations in the spectrum that will continue to be allocated for broadcast television service after the auction and promised to explore additional opportunities that would accommodate wireless microphone operations over the long term. Last summer the Commission adopted rules to provide wireless microphones with access to the future 600 MHz guard bands and duplex gap (including exclusive access to a 4 megahertz portion for licensed use), enable greater use of the VHF channels, and provide for new opportunities for licensed wireless microphones to operate on a secondary basis in three additional bands outside of the TV bands.

The Commission also has provided for a multi-year period, after the end of the auction, to help smooth the transition as wireless microphone operators obtain new equipment and move out of the repurposed 600 MHz band to other spectrum. These operators may continue to use the 600 MHz Band spectrum on a secondary basis until the end of the 39-month transition period. Together, these rules and policies establish clear protections and opportunities for wireless microphone operators to continue to provide their important service to consumers.

Written Question Submitted by Hon. Steve Daines to Hon. Tom Wheeler

Question 1. **Chairman Wheeler, Businesses recognize the importance of complying with the TCPA. In fact, some businesses have opted to ensure their compliance with TCPA by implementing rigorous training, monitoring, and enforcement programs. These compliance programs, can be an extremely costly investment, but businesses pursue these because it is the right thing to do and because these programs work.**

Does the FCC support the concept of a business voluntarily choosing to invest in compliance due diligence and verification programs? Why or why not?

Unfortunately, the promise of these voluntary compliance programs has been inhibited by a vague vicarious liability understanding that causes businesses to shy away from due diligence measures out of litigation fear – a perverse disincentive for businesses *not* to do the right thing. Should businesses be penalized for implementing programs with the goal on enhancing compliance? Why or why not?

The issue of a compliance measures was not addressed in the FCC's recent TCPA order. Would the FCC support a legislative proposal seeking to clarify this uncertainty by amending TCPA to potentially reward, as oppose to penalize, businesses that choose to the do the right thing by adopting comprehensive TCPA compliance programs?

Response: The Commission is committed to the TCPA's goal of protecting consumers from unwanted calls and texts, one of the largest categories of complaints that we receive. Compliance with the TCPA by businesses who make calls is, of course, a key component of ensuring that consumers do not receive unwanted calls and texts. Programs that involve training, monitoring, and enforcement regarding the TCPA's requirements can undoubtedly go a long way toward helping businesses make only calls that consumers value and avoid calls that they do not want to receive. We would be interested to learn more about the concerns that your constituent has raised about compliance programs, and would be happy to work with your staff to facilitate a meeting to discuss this subject in more detail.

Question 2. **Chairman Wheeler, during your testimony, you said that copyright laws remain in place under your set-top box proposal. Under your proposal, would a programmer providing its copyrighted programming to an MVPD retain its exclusive right to decide whether or not it wanted to appear in a third-party app developed by a different party? What in the proposal protects a copyright owner's right to decide whether, how and on what platforms to disseminate its content?**

Response: The new proposed rules would create a framework for providing device manufacturers, software developers and others the information they need to introduce innovative new technologies, while at the same time maintaining strong security, copyright and consumer protections. An important part of the proposal is parity, if a content owner has given the right to an MVPD to display the content on a different platform, the proposal seeks to allow others to develop options for that platform. The content protection and security that the MVPD chooses would be enforced just as they are today—in the private marketplace consistent with contracts,

copyright law, and the MVPD's power to revoke a compromised device's ability to receive service. The proposal is clear – we are committed to ensuring the protection of content creators' copyright and not interfere with the business relationships or content agreements between MVPDs and their content providers or between MVPDs and their customers. The proposal, which is based on the way that content protection is administered today, states that to license the content protection that is necessary to decrypt multichannel video programming from a MVPD, the third party must certify that it will honor copy protection limits and prevent theft of service.

Question 3. **Chairman Wheeler, when you testified before the Commerce Committee last May, you said that universal access is at the core of the FCC's mission, including access for individuals living on tribal lands. Yet, the Commission has not even consistently asked for funding for tribal consultation, and, by all accounts, has no intention to move forward with the next phase of the tribal mobility fund. Can you explain how this is consistent with your claim that access on tribal lands is at the core of the FCC's mission?**

Response: Universal access to telecommunications services, including on tribal lands, is a core element of the FCC's mission. The Commission is currently planning five regional Tribal consultation and training workshops for 2016. The Commission has also invited USDA to participate. The first of these workshops will be held in late May or early June in Montana, with four more to follow in Oklahoma and in the Great Lakes, Southwest, and Pacific Northwest regions of Indian Country. The Commission is committed to working with our Tribal partners and with USDA to ensure that the 2016 Tribal consultation and training workshops, as well as those in future years, provide as comprehensive and coordinated an approach as possible.

In addition, the proposal for an ongoing Tribal Mobility Fund remains under consideration as staff reviews the record regarding possible next steps for a Mobility Fund Phase II.

Further, the Commission recently adopted an FNPRM that seeks comment on reforming high-cost universal service support to promote broadband deployment on Tribal lands, including through a Tribal Broadband Factor for rate-of-return carriers serving Tribal lands. I plan to take action on this issue in 2016.

Question 4. **Chairman Wheeler, the FCC's exclusivity protections are a good way to avoid costly and unnecessarily litigation, especially for small businesses. Have you studied what kind of burden removing those non-intrusive protections could impose on small broadcasters who would then have to rely on expensive and time-consuming litigation with bigger companies to enforce their otherwise straightforward contractual rights?**

Response: While we did not do a study on the burden that could be imposed on small broadcasters, I strongly believe that there would be little, if any, need for broadcasters to resort to litigation. Specifically, the likelihood of litigation is low because under the proposal a distant station would have to grant its consent to be imported into another station's market by an MVPD.

In addition, an elimination of the exclusivity rules is unlikely to have an immediate effect on programmers, broadcasters, cable companies, or consumers. This is because current broadcast

program contracts and network affiliation agreements regularly contain their own exclusivity provisions prohibiting a program from being imported into a market if it is being shown on a local broadcast station. In these circumstances, retaining the exclusivity provisions may well be redundant and a federal intrusion, without cause, into the marketplace. Faith in the free market would suggest that government get out of the way, absent an indication of harm. Since the rules appear redundant to existing contractual provisions based on the record, their elimination would not be the trigger for such harm.

Written Question Submitted by Hon. Dean Heller to Hon. Tom Wheeler

Question 1. **For years, I have believed that the way in which rules are processed at the Commission lacks transparency and is detrimental to the American public. My FCC Process Reform Act would address these transparency and accountability issues for the sake of consumers and the industries supporting innovation and our economy.**

For example, the public has no idea the specific language of the rules the Commission is voting on until after they are passed. We saw that with the net neutrality rules that were pushed through this time last year, and we saw it a few weeks ago when the FCC voted on the proposal related to set-top boxes.

In fact, Chairman Wheeler said during that meeting on set-top boxes: "There have been lots of wild assertions about this proposal before anybody saw it." The problem is that the public doesn't know what to expect from the rule—there is no certainty for those on the outside.

Do you believe the public has a right to see the specific language of a rule before it is voted on by the Commission?

Response: I absolutely believe that the public has the right to see a proposed rule and comment on it prior to being voted by the Commission. This concept is at the heart of the Administrative Procedure Act as well as the Commission's rules. Proposed rules are published well in advance of any final rulemaking, as part of an NPRM. Following publication of the NPRM, we maintain an open and transparent comment period consistent with our rules and the APA. By the time a draft text of a final rule is circulated to the Commissioners, there have been multiple opportunities for the public to comment – comments, reply comments, and generally a significant period for *ex parte* filings and meetings.

Question 2. **As someone committed to protecting Americans' and Nevadans' privacy, especially related to personally identifiable information (PII), I have a questions regarding the recent set-top box Notice of Proposed Rulemaking.**

Currently, pay-TV companies must follow strong privacy protections to ensure consumers' personal information is not collected, utilized, or shared for non-service related purposes. How does this NPRM contemplate applying and enforcing these same privacy to any new suppliers entering the set-top box market? Does the FCC have the legal authority to enforce Title 6 privacy standards on third parties?

Response: Cable providers abide by specific privacy obligations under Title VI of the Communications Act. In the NPRM, the Commission tentatively concludes that developers of third-party navigation devices should certify they are in compliance with the same privacy obligations in order to receive the three information flows from pay-TV providers that enable third parties to develop competitive solutions. The proposal asks a number of questions about how best to enforce such a requirement, including whether an independent entity should validate third-party developer's certifications, whether the Commission should maintain the

certifications, and what the appropriate enforcement mechanism should be if there are any lapses in compliance with any certification.

Additionally, the NPRM notes that today, competitive navigation devices must comply with a host of state and federal privacy protections that include various remedies for consumers. All of these protections and remedies would continue to apply under the proposal in the NPRM.

Written Question Submitted by Hon. Jerry Moran to Hon. Tom Wheeler

Question 1. **The FCC's FY17 budget request says an increase in auction funding is necessary "to implement the requirements mandated by Congress in the Spectrum Pipeline Act of 2015." However, except for asking for a single report to Congress three years after enactment, the Spectrum Pipeline Act does not require any specific action of the FCC before 2022. Given that senior Commission staff have suggested that the Broadcast Incentive Auction will be complete by the end of the current fiscal year and you testified before the Committee on March 2 that it was unlikely that an auction emanating from the Spectrum Frontiers NPRM could be scheduled in 2017, why is increased FY17 funding necessary for the Commission's spectrum auction activities?**

Response: Before 2013, our annual auction spending had been capped at $85 million for nine years. This amount allowed for no inflationary adjustments, no funds for improving the operational efficiencies or resiliency of our IT systems, and no money to study new projects to support auctions programming.

The infusion of additional funds since 2013 has enabled us to raise over $42 billion for the Treasury in two major auctions, the H Block auction and the AWS-3 auction. These funds have also supported our efforts to develop and prepare for the first-ever Incentive Auction, which is slated to launch this month. The development and implementation of the Incentive Auction has required highly-skilled and technologically savvy FTEs and contractors with expertise across multiple disciplines, including cutting-edge economics and engineering. It also has involved the development of essential and resilient new IT systems.

After the completion of the Incentive Auction, however, a significant post-auction transition process will remain. To ensure preservation of service for broadcast viewers and timely network deployment, we have been focused on post-auction planning for over a year. We have released of the draft relocation reimbursement form and a reimbursement cost catalog for transitioning broadcast stations, and we have already begun to pivot and to accelerate our planning for the post-auction transition. Like the auction, the transition will be a complex effort spanning several years. Therefore, we will continue to incur costs associated with the Incentive Auction into the next fiscal year and beyond. The money spent in this effort will be as critical to the success of the auction as the money spent developing and implementing the auction itself and will yield important dividends – financially for the Treasury, and for industry growth supported by newly available commercial spectrum.

The Bipartisan Budget Act of 2015 not only extended our auction authority but it mandated that we work with other agencies to identify and develop resources for a "spectrum pipeline." In addition to the Incentive Auction and several other auctions on our planning list, we will be expending resources to support the core goals of the new legislation. To do so, we need to upgrade our traditional and aging auction IT systems – the ones that were not upgraded during the pre-2013 years – for use into the next decade, and engage in a broad range of economic and engineering studies to ensure that the next generation of auctions are at least as successful as past auctions.

Question 2. **Could you please provide the specific plans and details on how the Commission intends to carry out and manage the repacking of broadcast television stations that will remain on the air? It is understood that these plans and details may vary depending on the amount of spectrum available, please explain how this will be taken into account and provide any studies or analysis undertaken.**

Response: One of the Commission's primary goals is to allow stations sufficient time to move to their new channels in order to minimize disruptions of service to viewers. Commission staff is developing a transition schedule that will maximize the efficiency of this transition and minimize service disruptions. We have been working closely with broadcasters to get important input from the industry on planning a successful transition. We have also had discussions with representatives of the wireless industry, who obviously have a stake in an efficient transition process. We anticipate further interaction with all affected stakeholders as we develop and refine this transition plan.

The Commission is also committed to establishing fair and efficient process for reimbursing broadcasters' relocation costs. As part of that process, the FCC commissioned the Widelity Report to more fully understand the types of costs that would be required, and the magnitude of those costs, to help make efficient use of the Broadcaster Relocation Fund. The Commission's Media Bureau adopted a catalog of expenses as guidance, which will serve as a means of facilitating the process of being reimbursed by setting forth categories of expenses. The Commission is also planning on engaging a reimbursement administrator to facilitate the disbursement of funds. It recently solicited proposals for this position and is currently evaluating those proposals.

Question 3. **At the hearing, you indicated that you want to make certain that rural stations are not at the end of the line when it comes to reimbursement or when it comes to trying to find a contractor to build a tower. Does this mean that the Commission is concerned that there are not sufficient funds or time available for the repacking process? What plans and mechanisms does the Commission have in place to deal with either of those circumstances?**

Response: At this point, we have no reason to believe that the $1.75 billion Broadcaster Relocation Fund will be insufficient to cover broadcasters' relocation costs. In order to ensure the sufficiency of the fund, we will optimize the final broadcaster channel assignments to minimize relocation costs. This optimization will: (1) maximize the number of stations assigned to their pre-auction channel; and (2) minimize reassignments of stations with high anticipated relocation costs, based on the most accurate information available. These steps, taken together, will help to ensure that the $1.75 billion Reimbursement Fund is sufficient to cover broadcasters' relocation costs and that the Fund is disbursed as fairly and efficiently as possible.

We believe that a 39-month transition period is sufficient for stations to apply for a construction permit (3 months) and move to their new channels (during the 36-month construction period), while also enabling forward auction winners to get access to their newly acquired spectrum as quickly as possible, thus ensuring a successful incentive auction. The Commission will, of

course, take into account how many stations actually need to be repacked, and the specific characteristics of each, in determining the repacking schedule. Staff is developing a transition schedule that will maximize the efficiency of this transition and minimize service disruptions.

Question 4. **It is my understanding that stations being repacked will be assigned specific dates by which they have to be operating on their new channels. How will dates be established? How will such dates take into account stations in adjacent markets to avoid interference to viewers that could occur if an adjacent market transitions at a different time, or the "daisy chain" as you referenced in your testimony?**

Response: The Commission decided that having the flexibility to consider a variety of actors in establishing construction deadlines is critical to the success of the transition. We recognize that many different variables are at play that will impact when an individual station can successfully transition, including weather and seasonal issues, daisy chains and interference issues, and availability of equipment and crews. The Commission has been working closely with broadcasters to get important input from the industry on planning a successful transition, taking into account all of those different variables. We have also had discussions with representatives of the wireless industry, who obviously have a stake in an efficient transition process. We anticipate further interaction with all affected stakeholders as we develop and refine this transition plan.

Question 5. **What happens if a station through no fault of its own is delayed in making the change to its new repacked channel? Will the Commission delay the transition of stations in adjacent markets that could be impacted? How will the Commission keep stations informed of such delays? Will station costs associated with such delays be compensated?**

Response: The Commission believes that a 39-month transition period is sufficient for stations to apply for a construction permit and move to their new channels. While we will, of course, take into account how many and which stations actually need to be repacked in determining the repacking schedule, we see no reason now to change or repeal the 39-month deadline. Adopting a longer transition period would delay access by forward auction bidders to the spectrum they won in the auction. That in turn would depress forward-auction participation or the amounts that forward auction participants are willing to bid for the spectrum. The auction would clear less spectrum, and the Commission would return less money to the U.S. Treasury.

The Commission has created a framework that gives stations every opportunity to remain on the air, even if time runs short due to unforeseen circumstances. To assist stations, the Commission will permit six-month extensions for stations that, for reasons beyond their control, cannot complete the modifications to their facilities during their construction period. Additionally, special temporary authority may be granted to operate on a new channel using a temporary facility while they complete their tower modifications. Eligible broadcasters can also request special temporary authority to operate on a channel in the TV band that is available because it was relinquished by a winning bidder in the auction. Furthermore, the Commission is taking appropriate measures to disburse funds as fairly an efficiently as possible to ensure the sufficiency of the Relocation Fund.

***Question 6*. How will the Commission ensure that antennas, transmitters and other equipment be available for those stations with the earliest conversion dates? If stations have to pay more for such equipment or for expedited delivery will those costs be covered?**

Response: Commission staff is working with interested parties, including tower companies, equipment manufacturers, wireless carriers, and broadcasters to identify resources and encourage early planning by broadcasters that may be repacked or will voluntarily move to a different channel.

Congress provided for $1.75 billion dollars in the Spectrum Act. To help ensure the Broadcaster Relocation Fund is sufficient to cover broadcasters' relocation costs, the FCC commissioned the Widelity Report to more fully understand the types of costs that would be required, and the magnitude of those costs, to help make efficient use of the Broadcaster Relocation Fund. The Commission's Media Bureau adopted a catalog of expenses as guidance, which will serve as a means of facilitating the process of being reimbursed by setting forth categories of expenses.