Questions for the Record from Chairman John Thune
To
The Honorable Mignon Clyburn

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?*

Answer: Thank you for the question. Both the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) share a long and valuable history of collaboration on issues when it comes to protecting American consumers and I am pleased to say that I do not see that spirit of cooperation ever changing. But Senator, I must respectfully disagree with the premise of the question that the FCC has virtually no experience in protecting consumer privacy. As you mentioned, Section 222 is an explicit grant of authority from Congress regarding privacy for telecommunications networks and carriers. In fact, the actual title of Section 222 is "Privacy of Consumer Information" and there outlined are the duties of carriers to protect confidentiality and proprietary information. Well before the Open Internet Order, the FCC has been the only agency with jurisdiction to ensure telecommunications carriers protect consumer privacy.

The Chairman just circulated a Notice of Proposed Rulemaking on Section 222 and privacy for broadband Internet access service (BIAS) providers and I am currently reviewing the item. As I review the draft and meet with interested parties, I am open to all proposals and options on how best to protect consumers' privacy consistent with the directives of Section 222. I believe we are all better suited when we have a robust record that will help determine how best to proceed.

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?*

Answer: Yes. I commit to work quickly and collaboratively with the Commission to address any adverse or unintended consequences.

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?*

Answer: I agree that the FCC has a duty to ensure that, consistent with the objectives of the statute, rates in rural and high cost areas are reasonably comparable to urban counterparts just as we have a duty to ensure that low income consumers have access to services reasonably comparable to services available urban areas. The FCC conducts an urban rate survey every year to help assess what rates consumers are paying in those areas. This survey will enable us to compare the urban survey reults to rates in rural and high cost areas and, if necessary, take action to ensure rates remain reasonably comparable.

In addition, the FCC's high cost universal service fund is not designed to ensure that rates are affordable. Rather, the FCC's Lifeline program is the only means-tested program established to provide support to ensure that services are affordable for low-income consumers who need connectivity the most. Reforming the Lifeline program to ensure that those who qualify can apply for a Lifeline discount to broadband rather than just voice, is another pivotal measure to ensure that rates for advanced telecommunications services in rural and urban areas are ubiquitous and affordable.

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?*

Answer: In 2011, the FCC adopted the local rate floor to ensure that finite universal service resources are being used as efficiently as possible and not spent on subsidizing local rates that are artificially low. We need to ensure that support is sufficient but we should never provide any more support than is necessary. The rate floor reductions apply only to carriers that receive High Cost Loop Support or HCLS, which subsidizes intrastate costs and reduces support only to the extent rates are below the rate floor. Thus, carriers that do not receive HCLS are not impacted and interstate common line support or ICLS is not impacted.

In 2014, the FCC revised the implementation of the rate floor as follows:

- Between January 2, 2015, and June 30, 2016, support is reduced only to the extent rates are below $16;
- Between July 1, 2016, and June 30, 2017, support is reduced only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and
- Between July 1, 2017, and June 30, 2018, support is limited only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the impact of this rule was phased in over a four-year period and Lifeline customers were excluded from these limitations.

In 2015, the FCC found, based on a survey of urban rates, that the 2015 rate floor for voice services is $21.22, and the reasonable comparability benchmark for voice services is $47.48. It is my understanding that last year, of the 116,000 lines served by rate of return carriers in South Dakota, only 41 lines, or 0.0003 percent, were below the $16 rate floor. Thus, only carriers serving these 41 lines would see a reduction in HCLS support and only to the extent they are below $16. Based on this data, coupled with the phased in reductions outlined above, the rate floor reductions are still well below average rates paid

for by urban consumers. And, even after the phase-in, the rate floor will be based on urban rates which should ensure that rates in rural and high cost areas are reasonably comparable to urban areas.

In addition, rates for low-income consumers receiving Lifeline that are below the rate floor are not impacted and no support is reduced for these lines. Even so, I am happy to meet with you and your staff to better understand your concern and determine if there are ways for the FCC to take action to address it.

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?*

Answer: As I noted when the Commission adopted the declaratory ruling, the agency struck a difficult, but necessary balance with the item, maintaining the consumer protections that the TCPA intended, while taking into account the needs of businesses. I also noted that we would remain vigilant, monitoring consumer complaints not only when it comes to unwanted calls but also whether access to important and desired information is unintentionally lost.

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?*

Answer: As communications technologies change, so must our rules. The Commission's declaratory ruling took several steps to provide small businesses protection from TCPA litigation. First and foremost, any company can protect themselves by obtaining prior consent for their communication. Second, we provided some buffer for companies acting in good faith, by allowing them one call, post reassignment, in order to affirm any number reassignment.

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?*

Answer: The Commission receives overwhelming numbers of complaints from consumers about the robocalls and texts they receive. I voted for our declaratory ruling last year, including the one-call exception, because I believe we did what we could to provide clarity for good business actors in this space while protecting consumers from unwanted communications. I have also encouraged voluntary participation by all providers in some type of comprehensive database for reassigned numbers. This idea still has merit. But I look forward to reviewing any ideas to improve our implementation of the TCPA that the Chairman's Office proposes.

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?*

Answer: As noted above, the Commission receives overwhelming numbers of complaints from consumers about the robocalls and texts they receive, and the declaratory ruling struck a difficult, but necessary balance between maintaining the consumer protections that the TCPA intended, while also taking into account the needs of businesses. The declaratory ruling did not adopt a safe harbor, but I am open to reviewing any ideas to improve our implementation of the TCPA that the Chairman's Office proposes.

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?*

Answer: As noted in the NPRM, the Communications Act does not define the term "navigation device," but we interpreted the term to be broader than hardware alone, as Section 629 is plainly written to cover any equipment used by consumers to access multichannel video programming and other services. Software features have long been essential elements of such equipment, including before adoption of Section 629.

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?*

Answer: We are committed to defending copyright protections afforded to content creators, and the proposal does not interfere with the agreements between the content companies and MVPDs. In fact, in order to be certified, a navigation device maker will need to show that they are in compliance with security measures in order to receive information from MVPDs.

Navigation device makers will be required to pass through all content, including advertisements. As for inserting additional advertisements, the marketplace may actually help discourage such a practice, as most consumers are not looking for a product that provides additional advertisements. But I look forward to continuing to engage on this issue, and I hope that the record of this proceeding will help inform this issue.

Questions for the Record from Senator Deb Fischer
To
The Honorable Mignon Clyburn

Question 1. *Commissioner Clyburn, as the FCC moves forward with reforms of the Lifeline program, I continue to have concerns about the potential for waste, fraud, and abuse. In Nebraska, there is little to no waste, fraud, or abuse mainly due to the diligence of the state's Public Service Commission in overseeing the program. The PSC thoroughly vets all companies before designating them as Eligible Telecommunications Carriers, and they have leverage through this process to police the quality of the services provided. We also have a system of verifying the eligibility of consumers applying to the program. I understand that some of the changes that you are considering would eliminate the important role that states like Nebraska play in overseeing and policing the Lifeline program. How would the FCC be able to replicate the work that states do to prevent waste, fraud, and abuse in the Lifeline program?*

Answer: Thank you for the question. As a former state commissioner, I respect and appreciate the significant role many states play and am always mindful of this in my capacity as an FCC Commissioner. As we reform Lifeline, my goal is to create a dignified program that creates more choice for consumers and eliminates the incentives for fraud. I have heard the current Lifeline program, including eligibility determination and participation, may deter some providers from participating, and I am open to ways to reduce barriers and increase choice for consumers. The Chairman just circulated an Order to achieve these goals and, if you have concerns, I am happy to meet with you to better understand how we can achieve our shared goals.

Questions for the Record from Senator Ted Cruz
To
The Honorable Mignon Clyburn

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?

Answer: Thank you for the question. Nothing in the Open Internet Order suggests that the Commission asserted authority over the assignment or management of 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 telecommunications numbering.

IP addressing is 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. ARIN – the American Registry of Internet Numbers – is the regional administrator responsible for administering Internet numbers is the U.S. and certain nearby countries. The NTIA is the US Government agency that contracts with ICANN to perform the IANA functions.

Questions for the Record from Senator Dean Heller
To
The Honorable Mignon Clyburn

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?

Answer: Thank you for the question. In my opinion, the Administrative Procedures Act, which governs all federal agencies, has sufficient notice and comment requirements to give the public, including FCC licensees, adequate information about rules the Commission might adopt and sufficient opportunity to comment on any such proposed rules. To comply with the APA, the Commission typically discusses rule proposals in a Notice of Proposed Rulemaking. In some cases, it might be difficult to specify every detail of such proposed rules. Therefore, Commission should have flexibility, when those few instances present themselves, to not specify every detail of every proposed rule.

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?

Answer: Thank you for the question. I share your concern about protecting consumer privacy. While device manufacturers are not subject to Title VI as cable providers are, the NPRM proposes that in order to be certified, a navigation device maker will need to show that they are in compliance with privacy obligations in order to receive information from MVPDs.

In reality, this could mean that navigation device makers will comply with the more stringent European Union privacy regulations, in order to be able to market their products globally.