

**Questions for the Record for the Honorable Michael O’Rielly
U.S. Senate Committee on Commerce, Science, and Transportation
“Nominations Hearing”
June 16, 2020**

Questions Submitted by the Hon. Maria Cantwell to the Hon. Michael O’Rielly, Nominated to be a Commissioner of the Federal Communications Commission.

Executive Branch Concerns with FCC’s Ligado Decision. The Departments of Commerce and Transportation (along with the entirety of the executive branch) believe that the Federal Communications Commission’s (“FCC’s”) recent approval of Ligado’s terrestrial wireless plans threatens the nation’s global positioning system (“GPS”) on which the safety and security of everything from civil aviation to military operations to weather forecasting rely. The FCC rejected the executive branch’s concerns and related technical studies both from the government and the private sector showing that the precision and effectiveness of GPS could be impaired. Instead, the FCC relied on competing technical studies (some of which were funded by Ligado), and its own conclusion that the government studies measured the wrong things, to allow Ligado to move forward with its plans. Yet in its decision to allow Ligado to move forward, the FCC acknowledged that its “analysis [in the order] should not be construed to say there is no potential for harmful interference to any GPS device currently in operation in the marketplace.”

Question 1. Did the FCC quantify the number of receivers that would be negatively impacted by its decision, or analyze the impact of its decision on the risk this interference could cause to safety of life or property?

Answer. The Commission based its decision on the information submitted into the record, as required by the Administrative Procedures Act. The Federal agencies, which relied on testing and analysis that the Commission concluded was not directly correlated to measuring harmful interference and was technically flawed, did not submit information that would permit a receiver-by-receiver analysis. Based on the information and technical analysis supplied, FCC staff concluded that the risk of potential harmful interference to GPS operations was low. To further ensure that GPS operations would not be harmed, however, the Commission also placed extraordinary conditions on the approval, including imposing power limits on Ligado’s operations, prohibiting the use of the 23 megahertz of spectrum closest to the GPS frequencies, ordering that Ligado replace affected Federal receivers, mandating drive testing to ensure compliance with the technical rules, requiring Ligado to adhere to reporting requirements, including disclosing the location of its facilities to the Federal agencies, and ensuring that Ligado deploy a “stop buzzer” to shut down its system if there is harmful interference to GPS, among others. While there is always a risk that a new service can unexpectedly cause harmful interference, the Commission believes these mitigation conditions will sufficiently protect safety of life and property.

Question 2. Did the Department of Transportation or Commerce provide data in its study on the percentage of GPS receivers that would suffer interference from Ligado's terrestrial operations at the power levels recently authorized by the FCC? Did the FCC ask for such information?

Answer. To the best of my knowledge, neither the Department of Transportation nor the Department of Commerce provided specific data on the percentage of deployed and operational GPS receivers that could allegedly be subject to harmful interference from Ligado's future terrestrial operations at the power levels authorized. Commission staff generally rely on the information submitted in the record by interested parties. I do not have insight into all of the conversations between staff and the Federal agencies, so I am unaware as to whether staff asked for additional information on this question.

Question 3. Do you agree that in high-profile spectrum decisions, particularly ones which create potential risk to safety of life, that it is in the greater public interest to reach consensus among and between the FCC and the expert federal agencies on aviation, transportation safety, and national defense?

Answer. Generally, yes. It is always advisable to gain consensus with all affected parties, especially Federal agencies, whenever possible. In certain circumstances, however, the Commission has to consider all the relevant facts and decide issues regarding spectrum bands allocated for commercial use notwithstanding the objections of any particular Executive Branch Department or agency.

Question 4. Given the potential risks to safety; the unprecedented and unified opposition of executive branch agencies to the FCC's decision; and the fact that a third of the U.S Senate, on a bipartisan basis, has asked you and your colleagues to take a step back and reexamine the decision, would you be willing to support a stay of the Ligado decision until the FCC can work with the federal expert agencies to reach a sustainable consensus that serves the greater public interest in terms of protecting aviation and transportation safety, national security and our 5G future?

Answer. My understanding is that FCC engineers are engaging with the engineering staff of affected Federal agencies on data points not previously disclosed to the Commission regarding the Ligado license modification item. As I have previously committed, I am willing to give due consideration to a stay, based on new data or evidence, if such an item is circulated by the Chairman. Under our current procedures, only the Chair can initiate a reconsideration order, and I do not get the impression that such an item is being drafted at the moment. Notably, I have made numerous recommendations and provided proposals to modify the Commission's procedures to increase efficiency and transparency, including a greater role for Commissioners to initiate, amend, or vote on items.

Sustaining Local Media Outlets. Local newspapers, radio, and television stations provide important local content that keeps their communities informed. People rely on local newspapers

and broadcasters to cover school and business closures, communicate public health guidance, and to combat life-threatening misinformation. It is for these reasons that journalism, as an industry, is considered critical infrastructure. The Department of Homeland Security and state governors have deemed journalists essential workers. The current COVID-19 related economic crisis has exacerbated and accelerated the decline in local news advertising while at the same time underscoring the unprecedented need for local news outlets to give consumers access to accurate and timely information about local community business and government operation and information to promote public health, safety and protect consumers from fraud and abuse. Some local broadcasters have reported as much as a 90 percent loss in advertising revenues due to the effects of the coronavirus. Nationwide, advertising losses for local TV and radio broadcasters are estimated to reach at least \$3 billion as a result of the current health crisis. From 2000-2018, local TV stations' advertising revenue fell by 40 percent. From 2003-2018, the ad revenues of FM stations dropped by 43.8 percent. In contrast, large online platforms have used their dominant market power to take a massive share of digital advertising revenue. Facebook and Google currently account for 58 percent of national digital advertising revenue, and 77 percent of local digital advertising revenue respectively. In the last several months, almost half of newspapers have had to lay-off or furlough employees according to the News Media Alliance. Industry analysts predict these trends to continue, with digital capturing 59.5 percent of overall U.S. advertising revenue by 2029. The total estimated local ad revenues for a single digital advertising competitor—Google—will roughly equal the total over-the-air ad revenues for all TV stations in the U.S. and will soon exceed total TV station ad revenues.

Question 1. Given the revenue trends for local news organizations, it is likely that when we emerge from this crisis we will have many fewer local news organizations. In this context, what is your view of the FCC's statutory obligations to promote localism? What regulatory levers can the FCC now use to address the current precipitous decline in localism that I have just outlined?

Answer. One of the most important things the FCC can do for local journalism is to formally acknowledge the very marketplace changes that you properly highlight and update our definition of what constitutes the relevant advertising market for purposes of Commission rules and policies. I completely agree that online advertisers are seizing a sizable chunk of ad dollars that would otherwise, and in past eras did, go to local print and broadcast organizations. However, the failure of the FCC and DOJ to properly account for these changes in the market has played a significant role in undermining and preventing beneficial investments, partnerships, and in some cases, common ownership of local papers and television stations, which may help secure greater financial stability.

In fact, we have evidence that allowing certain transactions, subject to the Commission's thoughtful consideration and approval process, have beneficial effects for both the respective local news organizations, and more importantly, local communities. Specifically, in the Sioux Falls television market, the FCC last year allowed the combination of two television stations, of which one was clearly struggling, with a commitment that the owner would actually increase the amount of local news within the market. The two stations continue to operate under their respective banners, but combined have increased the amount of unique, local news being provided to the community by 35 percent. This is an exemplary case of how the FCC can facilitate an increase in localism and should serve as a model in other contexts as well.

**Questions Submitted by the Hon. Amy Klobuchar to the Hon. Michael O’Rielly,
Nominated to be a Commissioner of the Federal Communications Commission.**

Question 1. Last year, you voted to approve the proposed merger of T-Mobile and Sprint. As Ranking Member of the Antitrust Subcommittee, I repeatedly raised concerns about the harmful effects of eliminating one of the four largest wireless carriers, and I remain skeptical of the argument that the merger is necessary to maintain America’s leadership in deploying 5G.

Do you believe that it was in the public interest to approve a transaction that risks significant consumer harm for the promise of speculative benefits on 5G and rural wireless deployment that may not materialize?

Answer. Following a careful consideration of the record, extensive conversations with interested parties, and a review of the current marketplace, I decided to vote to approve the transaction. In weighing the various considerations, I was especially mindful of Sprint’s financial situation and diminished ability to be an effective competitor. I have never been one to artificially declare that having four providers is necessarily better than three, and I found merit in the argument that three strong wireless providers fighting for consumers is better than a market consisting of two strong competitors and two much smaller players. In terms of commitments made, I expect the Commission to fully enforce the obligations agreed to by representatives of T-Mobile and Dish.

In the end, only time will tell whether approving the transaction will ultimately prove the right decision, but I believe the Commission made the best judgment possible at that moment in time. Early indications suggest that the merger has been beneficial as new T-Mobile begins the integration of Sprint spectrum assets, enhancing its network and aiding the deployment of advanced wireless services for American consumers.

**Questions Submitted by the Hon. Richard Blumenthal to the Hon. Michael O’Rielly,
Nominated to be a Commissioner of the Federal Communications Commission.**

Blumenthal: On May 28, after being fact-checked for false tweets about mail-in voting, President Trump issued an executive order that directs Federal agencies to investigate and retaliate against online platforms over imagined political bias. The FCC is not an arm of the Presidency – it is an independent agency – it cannot be pressed into service to retaliate against Donald Trump's political rivals or to stifle critical speech.

Question 1. Will you commit to stand up to unconstitutional and bullying use of power by this President?

Answer. I have enormous respect for the FCC as an institution and the great people who work there. I will stand up against anyone seeking that the agency impose unconstitutional measures or abuse applicable statutes as enacted by Congress. In this case, the President is fully within his rights to seek an examination of this statute and any other he deems appropriate for purposes of carrying out his responsibilities. Clearly, certain high-technology companies apply content moderation in a way that is unfairly discriminatory to many groups, especially conservative Americans. While I have doubts as to the FCC’s statutory authority to issue rules in this area, I commit to carefully considering the record and all relevant issues should NTIA submit a petition for rulemaking.

Question 2. Do you believe that the FCC has the currently authority to write rules for tech platforms and to revise CDA 230 as the President has insisted?

Answer. As I have previously stated publicly, while I have deep reservations regarding whether the FCC has rulemaking authority in this area, I am open to considering whether Congress intentionally or unintentionally gave the FCC jurisdiction to issue regulations pursuant to Section 230. Specifically, I am carefully examining the substantive arguments already presented by individuals on both sides of the debate over Commission authority, including arguments involving agency consistency.

Question 3. What do you believe the FCC should do with the President’s E.O. and an anticipated NTIA petition to rewrite CDA 230?

Answer. As I stated in my testimony, I believe the Commission should seek public comment on any petition filed by the NTIA on this matter and develop a fulsome record from a wide range of experts, on issues such as the FCC’s jurisdiction and the First Amendment implications of any actions under consideration, prior to considering any specific rulemaking action. I commit to reviewing the record in any future proceeding and fully examining all the relevant issues prior to voting to adopt any new rules under the section.

Blumenthal: The Coronavirus pandemic and social distancing are a resounding demonstration of the importance of Lifeline. In normal times, Lifeline is underfunded. During a pandemic – when schools are shut down and businesses are shuttered – it is more essential than ever. There are now tens of millions of people that are newly unemployed as a result of the Coronavirus. They need the internet to get back to normal, to find new employment, and to find help.

Question 1. Do you agree Lifeline needs more funding during this crisis?

Answer. Unlike some conservatives, I believe that Lifeline can be an important part of meeting the Commission’s Universal Service obligations, and it is critical that the program be sufficiently funded, especially during the current COVID-19 crisis. The Lifeline program has been operating significantly under its budgetary target in recent years; as such, in the absence of data quantifying whether, or by how much, current program funding is insufficient, I cannot definitively state whether more funding is needed. That being said, I am certainly open to providing more funding to the program should there be a need to do so.

Question 2. Do you have an estimate about how much money it will take to support Lifeline? What considerations do we need to take into account in determining the amount of funds required?

Answer. I cannot currently provide such an estimate without consultations with experts within the agency and USAC to ascertain the existence and extent of recent increases in take rates and projected program needs. Without intending to avoid the question in any way, the fact of the matter is that the Chair is in a better position to provide a more comprehensive estimation. To the extent that the Lifeline program needs additional funding to meet the economic circumstances facing our nation, I would be supportive of steps to address such requirements.

Question 3. What changes would you recommend to improve the services offered under Lifeline to meet the public’s needs?

Answer. To ensure that the program meets the needs of low-income Americans and that participation remains affordable for both providers and subscribers, two changes come to mind: 1) halt the scheduled increase to the minimum scheduled standards for December 2020; and 2) stop the phase-down of support for voice service, also scheduled for December 2020. These two changes would help provide more certainty to subscribers, as well as ensure that the Lifeline program’s benefits remain accessible.

Questions Submitted by the Hon. Brian Schatz to the Hon. Michael O’Rielly, Nominated to be a Commissioner of the Federal Communications Commission.

Question 1. The COVID-19 pandemic has demonstrated important role broadband plays in our lives today. Whether it is used to engage in distance learning or consult with a doctor via telehealth, this pandemic has shown that broadband has become essential to participate in today’s society. Unfortunately, the pandemic has shown that previous efforts to deploy universal broadband have not worked, as the digital divide continues to exist. As an FCC Commissioner, what will you do differently over the next five years to ensure that all Americans have access to high capacity broadband?

Answer. I have worked hard, during this Commission and the last, to modernize our subsidy programs, and I firmly believe progress has been made in reducing the number of unserved Americans. However, despite our best efforts and the ratepayer dollars spent to provide universal broadband access, significant gaps in coverage remain. During my tenure, I have focused primarily on bringing service to the unserved, rather than duplicating service where it already exists, and using technology neutral market mechanisms to stretch funding as far as possible. While I plan to continue abiding by these principles should I be confirmed for an additional term, I believe more can be done to eliminate inefficiencies and waste in the USF, and in turn ensure scarce funding goes to those who need it most. For example, I plan to focus on eliminating wasteful overbuilding within the USF and promoting better coordination among the USF and other programs. From a broader perspective, I also believe we need to re-examine and reform the USF collection mechanisms and consider whether a large injection of Federal funds could be effective and properly managed to address the unserved population.

Question 2. The COVID-19 pandemic has shown that we, as a nation, have much work to do close the digital divide in our country. The universal service fund is a critical tool to support this work. However, for years the FCC has neglected to fix the current contribution methodology so that there are more funding sources available for broadband buildout in unserved areas. Instead, the Commission has proposed capping programs to depress demand and lower the contribution factor. You have been the Chair of the Federal State Joint Board on Contributions for the last three years. Do you have any updates on the status of contribution reform? Do you support any proposals to update the current contribution methodology? If not, why not? Outside of capping the universal service programs, how can the Commission ensure that the funding needs of all of our universal service programs are met?

Answer. I fully agree that the current trajectory of USF spending is unsustainable. At the same time, the Federal-State Joint Board on Universal Service has been at a standstill due to internal disagreement over how to reform USF contributions. Certain state members have been adamant that the only path forward is to assess a tax on broadband service, a position with which I fundamentally disagree. I am open to any and all other ideas to keep the USF sustainable, but I believe that imposing taxes on broadband would be harmful, regressive, and unequivocally the wrong answer.

Question 3. Last year the FCC sought comment on a proposal to combine the Rural Health Care and E-Rate programs into a single program with a unified spending cap. If the Commission goes forward with this plan to combine the caps of these programs, increased demand in one program could lead to both programs becoming underfunded, which would pit schools and libraries and healthcare providers against each other in an unnecessary competition for funding. How would having programs compete against each other for funding ensure that our health care providers and schools have the connectivity they need to provide telehealth and distance learning? Wouldn't the uncertainty caused by these programs competing for funding conflict with the Commission's duty under the law to provide "specific, predictable, and sufficient" support for universal service participants?

Answer. While I strongly supported the broader item and have long-advocated for the adoption of an overall USF budgetary cap, I would have preferred if the proposal to combine the budgets of the Rural Health Care and E-Rate programs was not included in the larger budgetary USF cap item. However, one of my colleagues required its inclusion and I thought it sufficiently mature to receive public comments and criticism. In addition to other concerns raised, I worry that combining the Rural Health Care and E-Rate budgets would be used to indirectly overrun the individual program caps and bypass a direct vote by the Commission to increase spending. That is not fiscally responsible.

Question 4. During a FCC press conference in March 2016, when discussing the outcome of an FCC decision on Lifeline, you stated "Never trust a democrat." In 2018, the Office of Special Counsel concluded that you violated the Hatch Act when you urged the election of conservatives at the Conservative Political Action Conference that year. Two months ago you sent a letter to President Trump praising his "extraordinary leadership ... on all communications policy matters, especially regarding 5G advanced wireless services..." This record of partisanship is disconcerting, particularly since your job is to work on important telecom issues that impact our country in a bi-partisan way. How can we ensure that you will be able to work with your fellow Commissioners on telecom policy who may have different political viewpoints than you?

Answer. In all fairness, these three incidents come with extenuating circumstances and require further explanation, which I am more than happy to provide to you or your staff. More importantly, however, my extensive record during my entire time at the Commission should distinguish me as perhaps one of the more bipartisan Commissioners among recent members. I have worked extensively with Commissioner Rosenworcel on a number of initiatives, including to free up additional spectrum bands for unlicensed services, culminating most recently with the 6 GHz order, and we have worked together on 5.9 GHz and other bands. Further, Chairman Wheeler and I worked together on multiple projects, including modernizing our High Cost program, and in fact, he and I participated in joint briefings on Capitol Hill, where together we discussed and briefed proposed changes with Members of Congress. Moreover, I previously worked extensively with Commissioner Clyburn on several projects, including means testing the USF High Cost program. While most observers would describe all of my colleagues as passionately committed to our respective approaches, we have been able to find ways to keep the lines of communication open, work through the issues, and, if we disagree, move on to the next

project. This is the approach I have maintained with everyone I've worked with on both sides of the aisle.

In sum, I came to the Commission to get policies enacted that would improve the lives of Americans, and if I am privileged to continue to serve, I intend to work with all my colleagues on this effort, regardless of their party affiliation.

Questions Submitted by the Hon. Jon Tester to the Hon. Michael O’Rielly, Nominated to be a Commissioner of the Federal Communications Commission.

Question 1. The 5G Fund proposal, which you supported, lays out a false choice between speed and accuracy, and suggests waiting for new maps would delay awards until at least 2023. How would “Option A” in the 5G Fund proposal, which moves ahead with awards based on inaccurate maps, avoid the pitfalls that doomed the Mobility Fund?

Answer. I appreciate your view and raised similar concerns when the item was adopted. While I voted for the Chairman’s proposal because I believed it was worthy of debate and public comment, I agree that it is necessary to produce more accurate wireless coverage maps prior to the expenditure of new funding. Accordingly, I made a public commitment in response to Chairman Wicker’s question at the hearing not to support moving forward with “Option A” of the 5G Fund proposal, phase II of RDOF, or any other new USF subsidy mechanism without new, accurate maps based on corresponding reliable and granular data — a position that I believe to be consistent with the recently enacted Broadband DATA Act.

Question 2. Even if accurate maps are not available in 2021, why should we consider spending the entire 10-year Fund based on maps that we know to be inaccurate, and which will soon be replaced?

Answer. As pertaining to the 5G Fund “Option A” proposal, I agree and will not support doing so.

Question 3. I understand the FCC is considering a proposal that would establish a cap on the overall USF budget and combine the E-rate and Rural Health Care programs under a single sub-cap. I hear from educators and health care providers in my state that worry this proposal will force them to compete against each other for funding. What is the status of this proposal?

Answer. As I stated in my answer to Subcommittee Ranking Member Schatz’s question on the same topic, this proposal was not advocated by my office and I would have preferred if it had not have been included in the larger USF cap item. The proposal served as an unnecessary distraction from the valid and broader effort to establish an overall USF budget and was poorly thought out. At this time, the public comment period has expired on the Notice of Proposed Rulemaking, and the Commission is reviewing the record prior to taking any further action.

Question 4. Given the connectivity issues highlighted by COVID-19, do you still support capping these programs?

Answer. Yes, as a matter of fiscal responsibility and offering protection for ratepayers, I believe an overall cap could help to increase the transparency of the Commission. In fact, most of the programs already have individual caps, and an overall cap would not prevent the Commission from voting to increase the topline or individual caps at any point in the future, should the

demand for the funding reach those levels. Currently, spending within the four existing programs combined remains more than a billion dollars below the proposed cap.