Written Question Submitted by Hon. John Thune to Hon. Jessica Rosenworcel

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?**

The Commission is the nation's expert agency with respect to communications technology. As such, I believe it has the capacity to develop policies to both protect consumers and provide broadband providers the certainty they need to develop their businesses without running afoul of the privacy provisions in the Communications Act—including Section 222, Section 338, and Section 631.

The Commission also has a long history of working cooperatively with other federal agencies, including the Federal Trade Commission. In fact, the staff of both agencies recently signed a Memorandum of Understanding to institutionalize their cooperation. So as the Commission begins a proceeding to update its privacy policies, I am hopeful that our efforts will complement the work of the Federal Trade Commission in a meaningful way.

Finally, in the decision reclassifying broadband Internet access service, the Commission found that this service "whether provided by fixed or mobile providers, is a telecommunication service." Moreover, the Commission determined that the "application and enforcement of Section 222 to broadband Internet access services is in the public interest." As a result, both fixed and mobile providers of broadband Internet access service are subject to Section 222. However, because the agency has not yet adopted a notice to begin a proceeding on this subject, I cannot speculate about how future rules might apply to different activities on a smartphone. But as a general matter, I believe that the Commission should set straightforward and fair rules that protect consumers and foster competition.

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?**

Yes.

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?

I believe that we will need to monitor the impact of any prospective universal service reforms that enable support for standalone broadband service. If we find that the reforms are not working as intended or that they do not comport with the Communications Act, including the charge contained in section 254(b)(3) that there be reasonably comparable services at reasonably comparable rates, then the Commission should be prepared to take additional action.

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?**

In the 2014 Connect America Fund Order in which it phased in the rate floor, the Commission described its reason for doing so as a matter of "fairness." Specifically, the agency concluded that it is not equitable for some consumers across the country to subsidize the cost of service for other consumers that pay local service rates that are substantially lower than the national average. I believe this approach is fundamentally correct. However, this is a situation that the Commission should continue to monitor in light of the petitions filed with the agency seeking reconsideration of this approach.

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?**

In the June 2015 Declaratory Ruling and Order, the Commission acknowledged that "the number of [Telephone Consumper Protection Act] private right of action lawsuits is increasing," while also noting that "[Telephone Consumer Protection Act] complaints as a whole are the largest category of complaints [the Commission] receive[s]." From Dec. 29, 2014 through Mar. 7, 2016, the Commission received 62,826 complaints regarding robocalls and 139,752 complaints regarding telemarketing. Additionally, the Federal Trade Commission reported that "[b]y the fourth quarter of 2012, robocall complaints had peaked at more than 200,000 per month."

In implementing the Telephone Consumer Protection Act, the Commission seeks to strike a balance in "affirm[ing] the vital consumer protections of the [Telephone Consumer Protection Act] while at the same time encouraging pro-consumer uses of modern calling technology." The Commission does this by "[p]roviding and reiterating guidance regarding the [Telephone

Consumer Protection Act] and our rules, empowering callers to mitigate litigation through compliance and dispose of litigation quickly where they have complied." Specifically, in the June 2015 Declaratory Ruling and Order, the Commission took into consideration the interests of businesses and other callers by "[c]larifying that 'on demand' text messages sent in response to a consumer request are not subject to [Telephone Consumer Protection Act] liability" and "[w]aiving [the Commission's] 2012 'prior express written consent' rule for certain parties for a limited period of time to allow them to obtain updated consent."

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?**

The Telephone Consumer Protection Act defines an "automatic telephone dialing system" as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." In the June 2015 Declaratory Ruling and Order, the Commission did not "address the exact countours of the 'autodialer' definition or seek to determine comprehensively each type of equipment that falls within that definition that would be administrable industry-wide." Rather, the 2015 Declaratory Ruling and Order maintained the Commission's conclusion in the 2003 Telephone Consumer Protection Act Report and Order that to be considered an "automatic telephone dialing system" the "equipment need only have the 'capacity to store or produce telephone numbers,'" as the statute dictates.

In any event, businesses are only prohibited from using an autodialer when a caller is using it to dial wireless numbers without prior express consent from the called party. In addition, businesses are permitted to use autodialers to call residential wireline numbers unless it is a prerecorded or artificial voice telemarketing call which then would require prior express consent.

I recognize that this is complex and technology has changed considerably since passage of the Telephone Consumer Protection Act. If Congress chooses to revisit the Telephone Consumer Protection Act, updating the definition of autodialer could help provide greater certainty for businesses and limit related litigation.

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?**

As you note, the Telephone Consumer Protection Act has resulted in a system that, in some cases, can feature misaligned incentives. In particular, some parties may find an incentive to exploit the operation of the per violation monetary penalty contained in the law, which states that "a person or entity, if otherwise permitted by the laws or rules of court of a State, bring in

appropriate court of that State—(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or (C) both such actions."

In recognition of the challenges of learning of reassigned numbers and to provide callers with "an opportunity to avoid liability for the first call to a wireless number following reassignment," the June 2015 Declaratory Ruling and Order concluded that "giving callers an opportunity to avoid liability for the first call to a wireless number following reassignment strikes the appropriate balance."

While the per violation basis for monetary penalties is defined in the statute, I am committed to exploring additional ways to address issues associated with discovering reassigned numbers, including the possibility of industry-led fixes. In addition, this is an area where the Commission should welcome additional Congressional input.

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?**

Yes. A number of petitions addressed in the June 2015 Declaratory Ruling and Order proposed some form of a safe harbor for reassigned numbers. The Commission considered these proposals but instead found that a "one-call window provides a reasonable opportunity for the caller to learn of the reassignment, which is in effect a revocation of consent to be called at that number, in a number of ways." The Commission stated that "[o]ne call represents an appropriate balance between a caller's opportunity to learn of the reassignment and the privacy interests of the new subscriber to avoid a potentially large number of calls to which he or she never consented."

In the June 2015 Declaratory Ruling and Order, the Commission also identified a number of options that, over time, may permit callers to learn of reassigned numbers.

First, the Commission recognized that there is at least one database that can help determine whether a number has been reassigned.

Second, callers can ask consumers to notify them when they switch from a number for which they have given prior express consent.

Third, the Declaratory Ruling and Order made clear that there is "[n]othing in the [Telephone Consumer Protection Act] or our rules [that] prevents parties from creating, through a contract or other private agreement, an obligation for the person giving consent to notify the caller when the number has been relinquished."

Fourth and finally, the record in the proceeding suggests that callers seeking to find reassignments can "(1) include an interactive opt-out mechanism in all artificial or prerecorded-voice calls so that recipients may easily report a reassigned or wrong number; (2) implement procedures for recording wrong number reports received by customer service representatives

placing outbound calls; (3) implement processes for allowing customer service agents to record new phone numbers when receiving calls from customers; (4) periodically send an email or mail request to the consumer to update his or her contact information; (5) utilize an autodialer's and/or live caller's ability to recognize 'triple-tones' that identify and record disconnected numbers; (6) establish policies for determining whether a number has been reassigned if there has been no response to a 'two-way' call after a period of attempting to contact a consumer; and (7) enable customers to update contact information by responding to any text message they receive, which may increase a customer's likelihood of reporting phone number changes and reduce the likelihood of a caller dialing a reassigned number."

In sum, the Commission concluded that "the existence of phone number database tools combined with other best practices, along with one additional post-reassignment call, together make compliance [with the Telephone Consumer Protection Act] feasible."

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?**

In paragraphs 21-24 of its rulemaking, the Commission describes its legal authority to implement the proposed rules. In critical part, it notes that the Communications Act does not define the terms "navigation device" or "interactive communications equipment, and other equipment." However, it notes that Section 629 covers equipment used by consumers to access multichannel video programming and that software features have long been essential elements of such equipment.

The Commission has invited comment on this interpretation of its legal authority. I look forward to reviewing the record on this subject and, in particular, any additional legal analysis on the scope of the agency's authority.

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?**

In paragraph 80 of its rulemaking, the Commission notes that it has not previously seen problems related to advertising, service presentation, and improper manipulation of content in the existing CableCARD regime. However, the Commission seeks comment on whether or not new rules are needed and asks if copyright law adequately protects against any concerns that may arise. In addition, in paragraphs 70 and 71 of its rulemaking, the Commission notes that licensing and certification will play an important role in ensuring that content is protected as intended. The Commission seeks comment on the role that licensing and certification can play, as well as

comment on alternative approaches the Commission could take to address content security and protection.

Written Questions Submitted by Hon. Deb Fischer to Hon. Jessica Rosenworcel

Question 1. **Commissioner Rosenworcel, in discussing the FCC's recent proposal on set-top boxes, nearly everyone has said that they would like to see the marketplace continue to move away from set-top boxes and towards more innovative methods of allowing customers to access video content. New technologies have increased competition in the video market, and companies like Netflix, Hulu, Roku, as well as a wide variety of video applications are providing new options to consumers. Further, many cable and satellite companies are moving away from set top boxes and towards application-based platforms. How do we continue to encourage innovation in the video marketplace while avoiding technology mandates and burdensome regulations?**

Section 629 of the Communications Act directs the Commission to help develop a competitive market for navigation devices, or set-top boxes. Despite past efforts, a competitive market for these devices has not emerged. In fact, today 99 percent of customers rent their set-top boxes from their pay-television provider. This is a situation I believe the agency needs to address.

At the same time, I share your concerns about stifling innovation in the marketplace. There is a new generation of viewers who want nothing to do with a set-top box and are choosing to cut the cord. Plus, new service types are emerging fast—faster than any rulemaking process at the agency. What new video models succeed, what degree of self-curated viewing they enable, and what prices consumers are willing to pay are still up for grabs.

As a result, I believe the Commission should be guided by the statutory charge to develop a competitive market but remain mindful that the ways we watch are changing.

Written Question Submitted by Hon. Ted Cruz to Hon. Jessica Rosenworcel

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?

I believe that the Commission's approach is consistent with the historic execution of its functions under the Communications Act. As you note, the Commission adjusted its interpretation of the term "public switched network" in order to better "reflect the current network landscape." Specifically, the Commission updated the definition of public switched network to mean "the network that includes any interexchange carriers, and mobile service providers, that use the North American Numbering Plan, or public IP addresses, in connection with the provision of switched services." This update reflects the fact that the "the term 'public switched network' should not be defined in a static way," and recognizes "that the network is continuously growing and changing because of new technology and increasing demand." Moreover, as the Commission made clear, "[t]his definitional change to our regulations in no way asserts Commission jurisdiction over the assignment and management of IP addresses by the Internet Numbers Registry System." In other words, the Commission updated its definition of public switched network to include the widespread use of IP addresses, but did not in any way assert jurisdiction over IP addresses.

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?

The Commission has plenary authority over numbering pursuant to the Communications Act. Section 251(e)(1) states that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." Among other things, this explicit grant of authority has been the foundation for Commission policies that ensure that consumers can keep their existing phone number when switching to a new phone carrier, that prevent premature exhaust of numbers in an area code, and that enable providers to

have access to numbering resources. To date, the Commission has not forborne from these policies and rules because they remain critical to the successful function of the public switched network.

Written Question Submitted by Hon. Roy Blunt to Hon. Jessica Rosenworcel

Question 1. **The policy choices facing the Commission are complicated, and require bipartisanship to produce consensus that balance the various concerns of multiple stakeholders. In the past, analysts have illustrated that votes at the Commission tended to be unanimous, but there has been a stark increase in party-line votes under the current Chairman.[1]**

Will you commit to working with your fellow commissioners to forge bipartisan consensus for the remainder of 2016, or should the United States Senate expect to see continued party-line votes?

Yes.

[1] https://techpolicyinstitute.org/2016/02/16/the-partisan-fcc/

Written Question Submitted by Hon. Steve Daines to Hon. Jessica Rosenworcel

Question 1. **Commissioner Rosenworcel, you said during your testimony that you agreed that small businesses should be exempted from some of the onerous regulatory burdens. Do you agree that small businesses should receive a permanent exemption from the Commission's Title II enhanced transparency rules?**

Yes. I support exempting small providers of broadband Internet access services from the enhanced transparency rule. Therefore, I believe that the Commission should adopt a permanent exemption, or at a minimum, a further extension of the exemption from the enhanced transparency rule for these providers.

Written Question Submitted by Hon. Dean Heller to Hon. Jessica Rosenworcel

Question 1. **Commissioner Rosenworcel, in your testimony before the Senate Commerce Committee, you said "the unsung hero of the wireless revolution is infrastructure...because no amount of spectrum will lead to better wireless service without good infrastructure" and rightly pointed out that we should "take a comprehensive look at tower siting on federal lands - which make up as much as one-third of our national real estate."**

As you know, 85% of Nevada is federal lands and many of my constituents who live, work, and visit those areas lack quality service. In 2009, the FCC adopted a shot clock for the municipal zoning process, which was later upheld by the Supreme Court and has significantly improved the deployment of wireless infrastructure.

Since the FCC has no authority over federal lands, there is no similar shot clock and as a result infrastructure requests can take many months or even years to get a response.

Do you support Congress legislating in this space and adopting a shot clock for federal agencies—such as the 270-day limit included in the MOBILE NOW Act approved by the Committee—to respond to wireless infrastructure requests?

Yes.

Question 2. **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?

As a general matter, I believe that the Commission should make available proposed rule text in any Notice of Proposed Rulemaking when initiating a proceeding that could lead to significant changes to agency policy. This affords the public a right to comment in a fulsome way before action on final rules are taken.

Question 3. **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?

The Commission's rulemaking proposes that competitive device manufacturers certify that they will adhere to the same privacy protections imposed on multichannel video programming distributors. It also seeks comment on the best way to implement and enforce this certification process, as well as the scope of its legal authority to do so. In addition, the rulemaking asks about state privacy laws that restrict how personally identifiable information may be used and whether or not such laws provide a level of consumer privacy protection that is comparable to what is required under the Communications Act. This is an important issue and I look forward to record that develops in response to these questions.