Chairman John Thune
Written Questions for the Record to
Commissioner Ajit Pai
"Oversight of the Federal Communications Commission"
Senate Committee on Commerce, Science, and Transportation

Question 1: What are your views on the interconnection provisions in the *Open Internet Order* and the record on which the FCC based such provisions?

Answer: The *Notice of Proposed Rulemaking* (*NPRM*) discussed IP interconnection in a single paragraph, tentatively concluding that the FCC should maintain the previous restrained approach, so that the Part 8 "Open Internet" rules would not apply "to the exchange of traffic between networks, whether peering, paid peering, content delivery network (CDN) connection, or any other form of inter-network transmission of data, as well as provider-owned facilities that are dedicated solely to such interconnection." Nevertheless, the *Open Internet Order* subjected IP interconnection arrangements to sections 201 and 202 of the Communications Act, arrogating to the FCC the power to order an Internet service provider "to establish physical connections with other carriers, to establish through routes and charges applicable thereto . . . and to establish and provide facilities and regulations for operating such through routes." In other words, the *Open Internet Order* adopted an unprecedented approach radically different from what the *NPRM* proposed. The record is hardly adequate to justify such a decision. Indeed, the best evidence in the record suggests the free market for interconnection has been an unmitigated success, with transit rates falling 99% over the last decade. In short, that decision was both unwise and unlawful.

Question 2: The FCC and state utility commissioners long ago recognized that, if utility-style regulation applies to Internet access service, "it would be difficult to devise a sustainable rationale under which all . . . information services did not fall into the telecommunications service category."[1] Do you agree with that previous Commission finding?

Answer: I do.

[1] Federal-State Joint Board on Universal Service, Report to Congress, 13 FCC Rcd 11,501, ¶ 57 (1998).

Senator Dean Heller
Written Questions for the Record to
Commissioner Ajit Pai
"Oversight of the Federal Communications Commission"
Senate Committee on Commerce, Science, and Transportation

Question 1: I believe that FCC Process reform is long overdue. Do you believe that we can make simple changes to the rulemaking process at the FCC that would create more transparency? Do you believe that we should codify the rulemaking process? Do you believe a proposed rule or amendment to a rule should be published for at least 21 days? If you do not believe that we should publish a proposed rule or amendment for at least 21 days do you believe it should be published before the vote at all?

Answer: I agree that changes should be made to the rulemaking process at the FCC in order to provide for greater transparency. The American people are too often left in the dark when it comes to agency decision-making. In the meantime, favored special interests are able to gain access to "non-public" information. This is wrong. The American people have a right to know what their government is doing. I therefore believe that drafts of all agenda items, including proposed rules or amendments to rules, should be released to the public at least 21 days prior to FCC meetings. I also favor codifying this practice in the FCC's rules.

Question 2: Would you please propose one regulation that we should eliminate?

Answer: There are many candidates, but one particularly outdated rule that the Commission should eliminate is the newspaper-broadcast cross-ownership prohibition. That regulation was enacted in 1975, a time when the information marketplace was vastly different than it is today. Back then, cable news didn't exist; neither did the Internet. Now, Americans can access an ever-widening range of news and information online at any time, day or night, so fewer and fewer of us choose to subscribe to a daily newspaper. And as online advertising becomes ever more local and mobile, the advertising niche once served by newspapers is fading fast. The numbers say it all. Since the newspaper-broadcast cross-ownership rule was enacted in 1975, over one in five newspapers in the United States has gone out of business. During that same time period, while the number of households in our country has increased by over 55%, newspaper circulation has declined by more than 25%. Had the prohibition on newspaper-broadcast cross-ownership been eliminated years ago, the industry's prospects might look brighter today. Investments in newsgathering are more likely to be profitable when a company can distribute news over multiple platforms. And cross-owned television stations on average provide their viewers with more news than do other stations. Given these facts and the substantial challenges facing the newspaper business, it doesn't make sense to single out broadcasters and prevent them from operating newspapers. If you are willing to invest in a newspaper in this day and age, the government should be thanking you, not standing in your way.

Senator Roy Blunt
Written Questions for the Record to
Commissioner Ajit Pai
"Oversight of the Federal Communications Commission"
Senate Committee on Commerce, Science, and Transportation

Question 1: Commissioner Pai, regarding the FCC's actions on inmate calling services, I saw that you voted in favor of the 2012 Notice of Proposed Rulemaking, and that the Notice was adopted by a 5-0 vote. However, you voted against the final Order in 2013, and you wrote a dissenting opinion to the Order.

Can you elaborate for the record why you dissented?

Answer: I dissented from the *Order* because it was legally infirm and bad policy. On the legal question, I thought the *Order* violated the Administrative Procedure Act by adopting rules that had never been proposed and by ignoring record evidence that contradicted the *Order*'s conclusions. On the policy side, I would have supported action to institute simple and reasonable rate caps. But the *Order* instead combined *de facto* rate-of-return regulation for ICS providers at all correctional institutions in America, which the FCC could not have administered effectively, with a flawed rate cap that would have resulted in county jails, secure mental health facilities, and juvenile detention centers scaling back their security measures or even terminating inmate calling services entirely. Five months after the FCC adopted the *Order*, the D.C. Circuit Court of Appeals stayed the majority of the *Order* from taking effect, presumably because it identified similar shortcomings in the FCC's decision.

Question 2: The FCC now has proposed rules to extend its regulation over the rates charged by inmate calling service providers to inmates for intrastate calls, even though the states regulate intrastate rates.

Do you believe the FCC can justify this intrusion into states' rights?

Answer: I am skeptical that the FCC has the authority to regulate the intrastate telephone rates of inmate calling service providers given section 2 of the Communications Act, which states that nothing in the Act "shall be construed to apply or to give the Commission jurisdiction with respect to [] charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier."

Senator Deb Fischer
Written Questions for the Record to
Commissioner Ajit Pai
"Oversight of the Federal Communications Commission"
Senate Committee on Commerce, Science, and Transportation

Question 1: All Commissioners, over 40 members of the Senate signed a letter to the FCC last year seeking a way for rate-of-return carriers to receive USF support for broadband-only subscribers. When will the FCC make this bipartisan priority a reality?

Answer: Two years ago, I called on the FCC to reform the USF to support broadband-capable facilities for rate-of-return carriers. And though progress has been slow—it took more than a year before the Commission sought comment on a standalone-broadband mechanism for rate-of-return carriers in June 2014—we're nearing the end. Along with my fellow Commissioners, I have committed to working towards adoption of a standalone-broadband mechanism by the end of the year. Although as a Commissioner I do not set the agenda, I am hopeful that we will remain on course.

Question 2: All Commissioners, what effect does reclassification have on the costs that cable ISPs will have to pay to attach their wires to utility poles and what will this change mean for my rural constituents that are cable broadband customers?

Answer: Reclassification is likely to increase the costs of cable ISPs by $150–200 million per year, increasing the cost of broadband to rural consumers. That's because cable ISPs will no longer qualify for the section 224(d) pole attachment rate (the cable rate) and instead will have to pay the higher section 224(e) rate (the telecom rate). Some companies will try to recoup these costs through higher rates; others will delay or avoid investment in rural America. Either way, it means higher prices and lower speeds for your rural constituents going forward.

Question 3: Commissioner Pai, can you share your views on the so-called general conduct rule and what it would mean for innovation and regulatory certainty? Do you believe this language is written in a way to only apply to ISPs?

Answer: The FCC's new Internet conduct standard gives the FCC a roving mandate to review business models and upend pricing plans that benefit consumers. With only seven vaguely worded—and non-exhaustive—factors to guide enforcement, the FCC will have almost unfettered discretion to decide what business practices clear the bureaucratic bar, and decisions about network architecture and design will no longer be in the hands of engineers but bureaucrats and lawyers. As the Electronic Frontier Foundation wrote: This open-ended rule will be "anything but clear," "suggests that the FCC believes it has broad authority to pursue any number of practices," and "gives the FCC an awful lot of discretion, potentially giving an unfair advantage to parties with insider influence." Even FCC leadership conceded that "we don't really know" what the Internet conduct rule prohibits, and "we don't know where things go next." That is the very definition of regulatory uncertainty, and entreprenuers will need to start seek permission from the FCC before innovating.

Although the rule apparently applies only to ISPs at this time, the reasoning underlying the rule and the FCC's expansive interpretation of section 706 of the Telecommunications Act gives the FCC a platform to apply this rule throughout the Internet ecosystem going forward.