Chairman John Thune
Written Questions for the Record to
Commissioner Michael O'Rielly
"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?

I am deeply troubled by the Commission's decision to impose regulations on what has been known for years as peering, especially under a vague standard contained in section 201 of the Communications Act (i.e., just and reasonable) and without any evidence of actual harm to providers or consumers. The Commission's lack of a record to establish such a regime is astounding and is a deep exposure point for future litigation from a process perspective. More importantly, I do not agree with the claims of statutory authority used to justify the new review process. Lastly, the case-by-case structure based on complaints by those disagreeing with how private negotiations are going creates a high level of uncertainty that will cloud the peering marketplace.

Question 2: You recently wrote a blog post critical of the use of "delegated authority." Can you expand on your concerns in this area, and do you fear that "delegated authority" has become a mechanism for diminishing the ability of commissioners to influence the FCC's business?

The use of delegated authority is not a new practice by the Commission, but its increased use is a troubling one. Overall, its use is a systemic effort to expand the power of the majority to effectuate its agenda under the guise of efficiency. Unfortunately, by decreasing debate and thoughtful review, it increases the likelihood that outcomes and decisions are unsustainable – both from a process and policy perspective. In fact, I am living with decisions to delegate authority to staff made years ago by previous Commissions, which seems unreasonable. I have advocated specific changes to delegated authority that would address the biggest drawbacks to its use. These include requiring the staff to notify Commissioners no later than 48 hours before release of an item in which delegated authority is used for non-routine matters. This uniform period is not provided today. Additionally, Commissioners should have the right to undelegate an item and resolve it by a full Commission vote.

Question 3: 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?

Disappointingly and against my views, I predict that over time the Commission will expand its reach under the new Net Neutrality rules beyond broadband networks to apply to all

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

other types of information services, such as the application layer (i.e., edge providers). Despite promises not to do this, there is nothing in the rules that would prevent it from occurring and the natural mission creep of a regulatory body will expand into areas not supposedly intended. The reality is that this Commission has already extended itself into the edge provider area in a couple of instances (e.g., text to 911). Additionally, the lines between broadband networks and edge providers have blurred and will continue to do so, making it more likely that the Commission will overstep this imaginary line.

Senator Dean Heller
Written Questions for the Record to
Commissioner Michael O'Rielly
"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?

I appreciate your great leadership on this issue and concur with your efforts. I have outlined a number of ways to reform the Commission's procedures, particularly as it pertains to resolving issues at the Commissioner level, that would improve transparency, efficiency and accountability. I agree with each of your questions posed above.

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

While it is difficult to select one specific rule for elimination, I suggest that it is time to consider the outright ending of the Commission's separations regime. In it, the Commission and states allocate telecommunications carriers' costs based on whether the service is federal or state in nature. In our modern communications environment, and particularly given the purely interstate nature of the Internet, the old separations structure is a good candidate for being eliminated or at least seriously curtailed. The Federal-State Joint Board on Separations is currently considering separations reform, and I hope that they will complete their comprehensive review, with an eye towards ending these rules, in the near future.

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

Question 1: In 1991, Congress passed the Telephone Consumer Protection Act (TCPA). The intent of the legislation was to cut down on the growing number of unwanted telemarketing calls interrupting families and consumers at home. At the time, 90 percent of households used a landline telephone, but today technology is changing as more households "cut the cord" and use wireless phones.

Despite the change in technology, TCPA regulations have not kept pace and need to be modernized.

Today, there are numerous petitions that have been pending at the FCC for months, and in many cases for over a year.

The lack of action by the FCC is hurting consumers. For example, as Chairman of the Appropriations Subcommittee on Labor, Health, and Education, I hear from student loan servicers who cannot contact graduates in danger of becoming delinquent on their payments.

This is detrimental to a student's long-term credit, and the problem extends to virtually every business across every sector of the economy.

Commissioner O'Rielly, is it possible for the FCC to address this issue?

I believe that it is an absolute necessity that the Commission act on the issues raised by the more than almost three dozen petitions seeking clarity and relief from the TCPA, as authorized by the statute, in order to permit the offering of beneficial services to consumers by legitimate companies. Disappointingly, a number of parties have argued that any action on such petitions would be an effort to flood consumers with robocalls, which is certainly not my goal nor a realistic assessment. I am hopeful that the Commission will be able to overcome this demagoguery and thoughtfully act on this issue in the near future.

Senator Deb Fischer
Written Questions for the Record to
Commissioner Michael O'Rielly
"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?

As I previously promised to Chairman Thune, I will dedicate the necessary energy and time to resolve the remaining pieces of USF reform, including developing solutions for rate-of-return carriers. During my time at the Commission, I have actively engaged the carriers and Commission staff on ways to move forward with the intent to reach resolution in quick fashion. I am worried, however, that meeting an year-end deadline will require some significant changes in the priorities of the Commission, including resources and staff, as well as a willingness of all parties to find an acceptable compromise. I am hopeful that the recent attention to this issue, as evident by it being raised in the Commerce hearing, will expedite the timeline.

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?

At this point in time, it would certainly seem that the decision by my colleagues to reclassify retail broadband Internet access service as a telecommunications service will lead to rate increases for pole attachments, as governed by section 224 of the Communications Act. I am worried that any increases will make it more expensive to deploy broadband by companies and access broadband by consumers, especially in rural America. While the Commission has indicated that this is not the desired outcome, and staff is now seeking comment on an aspect of this issue, it is unclear what the outcome or legal justification will be.