

Questions for the Record

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

“Nominations of Gigi Sohn, to be a Commissioner of the Federal Communications Commission; Alan Davidson, to be Assistant Secretary of Commerce for Communications and Information, DOC; Viqar Ahmad, to be Assistant Secretary for Administration and Chief Financial Officer, DOC; and Jed Kolko, to be Under Secretary of Commerce for Economic Affairs, DOC”

10:00 AM, December 1, 2021

Questions for the Record from Richard Blumenthal to Gigi Sohn

Topic. *The FCC’s public safety mandate is written into its founding statute – it’s literally in the first line of the Communications Act. First responders depend on our telecommunications networks in times of emergencies and to operate public safety systems. That ranges from people being able to pick up the phone and dial 9-1-1 all the way to the messaging systems used by the police and firefighters that respond to that call.*

Question: Can you tell me more about how, as a Commissioner, you would promote public safety and support the police, firefighters, and other first responders that depend on the FCC?

Answer: Serving and enhancing public safety is one of the most important obligations of the FCC. If confirmed, I would seek to ensure that every rulemaking, adjudication and decision of the Commission considers the potential implications for public safety. In particular, the Commission must ensure that police, firefighters and other first responders have access to the resources they need – especially in times of crisis. In the words of the D.C. Circuit, when the FCC fails to consider possible harms to public safety “People could be injured or die.” *Mozilla Corp. v. FCC*, 943 F.3d 1, 62 (D.C. Cir. 2019).

As a first priority, I would seek to ensure that public safety communications cannot be blocked or throttled. 911 Communications, wireless emergency alerts, Amber Alerts, and official communications from police, firefighters or other first responders to the public—and communications by the public to first responders—must flow smoothly and without interference. Additionally, first responders must have adequate and secure spectrum to communicate with each other, free from harmful interference.

I also fully believe that network reliability and resiliency are critically important to first responders. I would fully support efforts by the Commission to ensure that we have robust communications networks that allow first responders to communicate reliably with one another during national disasters or terrorist attacks. This includes ensuring the smooth operation of FirstNet, and that FirstNet remains faithful to its core mission of serving the first responder community.

If confirmed, I would also consult regularly with law enforcement, firefighters, EMTs and other first responders to ensure that the unique needs of each community are met. I am aware that law enforcement are concerned about the illegal use of contraband cell phones in prisons, and I pledge to work closely with the law enforcement community, the correctional community and

wireless providers to find ways to prevent the illegal use of contraband phones by incarcerated individuals consistent with the FCC's statutory authority.

Topic. *If confirmed, robocalls will be an immediate issue for you at the FCC. Chair Rosenworcel circulated a proposed rule on blocking robotexts last month.*

Question: If confirmed, will you support Chair Rosenworcel's proposed rules on robocalls and fraudulent text messages?

Answer: I agree that robocalls and robotexts are a major nuisance and a serious concern for consumers and I understand that the Chairwoman has made the issue a top priority. The text of the Chairwoman's proposed rules is not publicly available, so I do not know the specific details, but I am supportive of her efforts on this issue. If confirmed, I look forward to working with the Chairwoman and the other Commissioners on the issue and reviewing the record developed in the proceeding.

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10:00 AM, December 1, 2021

Questions for the Record from Senator Jon Tester to Gigi Sohn

Work History

Question: Can you talk about your work on copyright issues, including your involvement in Locast, and how your previous work may impact your views on broadcast issues as a Commissioner at the FCC?

Answer: I was Co-founder and Chief Executive Officer of the public interest organization Public Knowledge, which, among other things, sought to ensure that copyright, patent, and trademark law reflected its constitutional directive “[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” This meant promoting policies that both ensured that creators could profit from their works and that the public was able to lawfully make use of those works, including those works that they purchased.

Locast was a streaming service that provided local broadcast signals to those who couldn’t receive local signals over-the-air, including many in rural areas. I believed that was a good thing both for viewers and for local broadcast stations, but the broadcast networks disagreed. They sued and the service was shut down.

My previous copyright work and participation on the Locast board will not in any way impact my views on broadcast issues if I am confirmed as a Commissioner at the FCC. I believe strongly that local broadcasting is vital to the lifeblood of every community—providing local news and information and critical emergency services free to every American. It is the bulwark against misinformation and toxic online culture, and I am committed to ensuring that it grows and thrives. If I am confirmed, I would approach every issue impacting broadcasters in a way that promotes their competitiveness, resiliency, and diversity in today’s media landscape.

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10:15 AM, December 1, 2021
253 Russell Senate Office Building

Questions for the Record from Hon. Sinema to MR. GIGI SOHN

Copyright. Some have raised concerns about your leadership role at the streaming service Locast. A federal court determined that Locast did not qualify for a copyright exemption and a settlement was reached to end its operations.

Question 1: Following your role with Locast and the settlement agreement, if you are confirmed to the Federal Communications Commission (FCC), would you harbor any biases against parties associated with the case, and would you be able perform your duties in an independent and fair manner towards all parties?

Answer: Over my 30-year career as a public interest lawyer, I have worked closely with almost every major communications industry and individual corporation. I have always worked in an independent and fair manner, including when I worked at the FCC from 2013-2016. If confirmed, I would harbor no biases against the parties associated with the lawsuit against Locast, and I would be able to perform my duties in an independent and fair manner towards all parties.

Question 2: What is the FCC’s role in relation to copyright?

Answer: The courts, the Copyright Office, and Congress have consistently affirmed that the Commission lacks jurisdiction over matters of copyright policy. If confirmed as Commissioner, I would commit to ensure that the FCC does not seek to extend the bounds of its jurisdiction to matters of copyright.

Question 3: One of my criteria for reviewing nominations is whether the nominee can be trusted to faithfully execute and uphold the law as it exists. Will you faithfully uphold the law related to copyright and retransmission consent as it exists?

Answer: Yes. I am committed to the rule of law and will faithfully uphold the law related to copyright and retransmission consent as it exists.

FCC Maps and IJA. The Infrastructure Investment and Jobs Act (IIJA) provides a significant investment in broadband deployment, with Arizona receiving at least 100 million dollars over five years to expand access to high-speed internet. This is especially important for Arizonans living in rural areas. In order to allocate these broadband investments, the Commerce Department and FCC will look to updated broadband maps to determine which areas of the country currently do not have access to high-speed broadband.

Question: Considering past mapping delays, how will you work to ensure the FCC produces accurate broadband maps in a timely manner?

Answer: If confirmed, I intend to work side-by-side with Chairwoman Rosenworcel and other Commissioners to ensure that the FCC's maps are produced accurately and expeditiously. I am delighted that the FCC has recently entered into a contract for the broadband serviceable location fabric, which indicates where broadband *can* be deployed. The next challenge is to obtain the data from broadband providers which indicates where broadband *is currently* deployed. I would like to assist in obtaining this critical information from the providers in an expeditious manner.

Affordable Connectivity Program. Congress permanently reauthorized the Emergency Broadband Benefit Fund in the IIJA, now referred to as the Affordable Connectivity Program. The program was initially created during the onset of the COVID-19 pandemic to help more low-income households gain access to affordable broadband. The IIJA requires the FCC to promulgate a regulatory framework to implement the program within one year.

Question: Are you confident the FCC will be able to implement a final rule for the Affordable Connectivity Program within the timeframe established in the IIJA?

Answer: If confirmed, I would consider this a priority for the Commission. It is my understanding that the Commission has already taken the initial steps to transition the Emergency Broadband Benefit Program to the Affordable Connectivity Program. For example, the Commission released a Public Notice on November 18, 2021 seeking comment on the implementation of the Affordable Connectivity Program. The Commission noted within the Public Notice that it interprets the interplay between the statutory provisions for the Emergency Broadband Benefit Program and the Affordable Connectivity Program to require new rules within 60 days of enactment. Additionally, the Commission released an Order on November 26, 2021, which waives certain rules for the enrollment freeze and notice requirements for the end of the Emergency Broadband Benefit Program to facilitate the transition to the Affordable Connectivity Program by the end of the year. Finally, The Commission is required to adopt final broadband transparency rules under the Affordable Connectivity Program within one year of enactment. If confirmed, I look forward to working with the Chairwoman and other Commissioners to meet the statutory deadlines in the IIJA for implementation of the Affordable Connectivity Program.

Audience Data. The FCC relies on audience data for numerous regulatory purposes, including to define local television markets and to determine the national audience reach of a company’s total broadcast stations when applying its regulations enforcing the national ownership cap.

Question: What are your thoughts about the FCC’s use of audience data, the sources the FCC relies upon to collect audience data, and the state of competition to provide audience data to the FCC?

Answer: The Commission has used the Nielsen Designated Market Areas (DMAs) to determine the national audience reach under the national ownership cap since 1999.¹ Industry supported the switch to the Nielsen DMAs because they were used in other regulatory contexts—such as must carry and retransmission consent—and the prior method of collecting the data was no longer reliable.² The Commission previously concluded in 1996 that the use of Nielsen DMAs was an appropriate method for determining a TV station’s local market for purposes of cable carriage³ after Congress modified Section 614 of the Communications Act in the 1996 Telecommunications Act to require the Commission—by regulation or order—to use “commercial publications which delineate television markets based on viewing patterns.”⁴ Additionally, the Commission is required by statute to use DMAs for defining local television markets in the context of satellite carriage.⁵

I have no reason to believe that the Nielsen DMA audience data is not accurate or reliable for these uses and I am not aware of other companies that provide the same data. In fact, the move to using Nielsen data in some cases was precipitated by the fact that the prior company no longer collected the relevant data.

If changes are necessary, the Commission would need to conduct a rulemaking to modify its current approach under the broadcast ownership and cable carriage rules. And Congress would have to modify the statute to provide for Commission authority to use other sources in the satellite carriage context.

¹ See Federal Communications Commission, *Report and Order*, FCC 99-208 (August 6, 1999) (https://transition.fcc.gov/Bureaus/Mass_Media/Orders/1999/fcc99208.pdf).

² *Id.* at ¶ 34.

³ See Federal Communications Commission, *Report and Order*, 11 FCC Rcd 6201 (April 26, 1996).

⁴ 47 U.S.C. § 534(h)(1)(C).

⁵ 47 U.S.C § 338 (signal carriage rights) and 17 U.S.C. § 122 (copyright).

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10:00 AM, December 1, 2021

Questions for the Record from Senator Ben Ray Luján to Ms. Gigi Sohn

Racial Equity Assessment.

On the first day of his presidency, President Biden signed an executive order that called for each federal agency to “assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.” That executive order also “strongly encouraged” independent agencies, like the FCC, to comply with this directive.

Chairwoman Rosenworcel in September agreed with the need for this kind of assessment, stating “I recognize we can’t build a better, more equitable future without a reckoning of how our past continues to influence our present and how too many communities continue to be overlooked and underserved.”

Question 1. Will you commit to supporting a racial equity assessment at the FCC, as you advance all of the agency's mandates to promote diversity in licensing, as well as in communications policy broadly?

RESPONSE: Yes.

Joint Sales Agreements & Minority Ownership.

During questioning with Senator Rosen, you stated that your position on joint sales agreements and sidecar agreements with minority broadcasters had been misstated. It’s critical to set the record straight on issues that might affect diversity in broadcasting.

Question 2. Please clarify your position on joint sales agreements with minority broadcasters. What impact would your position have on diverse media ownership?

Answer: As part of her inquiry at the hearing, Senator Rosen said “I understand concerns have been raised about your opposition to policies such as "joint-service agreements" and "shared-service agreements," which allow stations to share facilities and employees and jointly sell advertising, which I understand can be critically important for minority-owned stations.”

I did not and do not oppose the use of either joint sales agreements or shared-service agreements by minority-owned stations. When I worked for former Chairman Wheeler in 2014, the FCC

adopted rules that made these agreements attributable for purposes of the ownership rules with the exception of those arrangements where broadcasters can prove the deals are in the public interest “such as when they expand the diversity of voices in a community through sharing expenses between truly independent stations.” This exception ensures that stations that benefit from these arrangements are indeed minority owned and controlled, and that they are not used by non-minority station owners to evade the ownership rules.

Areas of Focus for the Quadrennial Review

During questioning with me, you noted the quadrennial review as an important opportunity to find new ways to improve minority media ownership.

Question 3. What specific areas and rules deserve most scrutiny during the quadrennial review for their impact on Latino media ownership?

Answer: Local broadcasters continue to be vital to the communities that they serve and are an important part of the media ecosystem. At the hearing, I committed to Chair Cantwell to work with her and others on policies to support local broadcasters. I also believe that there should be a diversity of ownership and diversity of viewpoint in the broadcasting industry. The Commission is in the midst of its 2018 Quadrennial Review where it sought comment on the remaining media ownership rules—the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule—and sought comment on a variety of diversity proposals. If confirmed, I look forward to reviewing the record that the Commission has developed to determine how best to achieve the Commission’s goals of localism, competition, and diversity in the broadcasting industry, including the collection of reliable data to assess trends in ownership diversity. Additionally, as I noted at the hearing, I would like to review the Commission’s incubator program, which the Supreme Court reinstated earlier this year, to see if that is another potential opportunity to increase the diversity of ownership in the broadcast industry.

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Questions for the Record from Senator Warnock to Gigi Sohn

FCC Mapping. The federal government is poised to make generational investments in broadband expansion, and we desperately need the FCC to develop accurate maps that show us which communities remain unconnected. I’m proud that Georgia is a leader in broadband mapping, and I believe that the Georgia map is really among the most accurate in the country when it comes to providing granular information about who is and isn’t connected.

Question: Would you commit to working with state and local leaders in Georgia and across the country to incorporate all of their information and build a more accurate map?

Answer: Yes.

Question: Would you commit to prioritizing broadband mapping so that we can better allocate federal investments in broadband?

Answer: Yes.

Supporting minority broadcasters. Some have reported that Nielsen’s TV and radio ratings may undercount Black and Hispanic audiences, which can result in lower revenues for Black and Hispanic-owned stations and less diverse programming on radio and TV. In 2008, a coalition of minority radio broadcasters stated that the lower ratings would “disenfranchise minority communities and have a devastating impact on small businesses.”

Question: Would you commit to working to promote diversity in the broadcasting space and addressing barriers that minority broadcasters may face, such as inaccurate audience numbers?

Answer: If confirmed, I look forward to working with your office to find ways within the Commission’s authority to address the barriers that minority broadcasters face. While the ratings systems for the radio and TV industry are governed by private companies, I do note that Nielsen modified its broadcaster reporting policies effective earlier this year so that more small minority-owned stations will be reported.