

Questions for the Record to Mr. Nathan Simington
U.S. Senate Committee on Commerce, Science, and Transportation Committee
Full Committee Nominations Hearing
November 10, 2020

Written Questions Submitted by the Hon. Maria Cantwell to Mr. Nathan Simington.

POLITICO Report. On November 23, POLITICO published a story by reporter John Hendel titled “Trump's FCC nominee sought to enlist Fox's Laura Ingraham in anti-tech fight” (<https://www.politico.com/news/2020/11/23/fcc-nathan-simington-laura-ingraham-anti-tech-439806>). The story stated the following:

Federal Communications Commission nominee Nathan Simington reached out to Fox News this summer in an attempt at “engaging” host Laura Ingraham to support President Donald Trump’s quest to make it easier to sue social media companies like Facebook and Twitter, according to emails obtained by POLITICO.

Simington, a senior adviser in a key Commerce Department tech agency, wrote that the popular Fox News host could help sway the FCC to act on Trump's proposal before Election Day. He also suggested that democracy hinged on the ability of the commission — which has not traditionally regulated social media — to target Silicon Valley companies.

“Any additional support we might be able to obtain could help to get the FCC on board more quickly and thereby ensure a freer, fairer social media landscape going into the elections this fall,” Simington wrote in a June 22 email to a Fox News staffer. “This is of concern both to the presidency and also down-ballot, and given the emerging role of social media as a replacement for mass media, our democracy will be weakened if we cannot respond to this issue quickly and effectively.”

Simington, who works for the Commerce Department's National Telecommunications and Information Administration, wrote the email months before Trump nominated him for a five-year term on the FCC.

Trump has spent the final months of his reelection campaign and presidency feuding with the dominant social media platforms after they started fact-checking his posts on topics such as the pandemic and alleged election fraud. In a May executive order, Trump asked the FCC to reexamine a congressionally created liability shield that protects online companies from suits over how they handle user-posted content.

Ingraham, whom Trump frequently has cited favorably, has echoed the GOP’s attacks on the tech industry and years earlier had eyed joining the administration. Fellow Fox News host Tucker Carlson publicly backed Simington's FCC nomination in an October segment where he pressured Senate Republicans to speed up.

During your testimony to the Committee at your confirmation hearing, you indicated that you had a minimal role in developing and advocating in support of the petition. This story suggests, Mr. Simington, that you were less than truthful with the Committee about your involvement with—and actions related to—NTIA’s section 230 petition.

Question 1. Did you send emails to Fox News staff or staff for other media organizations seeking support for the Section 230 petition?

Answer. Yes. I sent one email to a Fox News staffer seeking to raise awareness of the NTIA Section 230 petition. Other than that, I did not communicate with any other media organization about the Section 230 petition. This email was routine advocacy for earned media support and as such was part and parcel of the role I serve at NTIA.

Question 2. With whom within NTIA, at the White House, or in the Trump campaign did you consult in advance of sending the foregoing emails?

Answer. I consulted with Adam Candeub, then Deputy Assistant Secretary at NTIA. If there had been sufficient interest from Fox News, I would then have spoken with NTIA’s media communications personnel to ensure proper content and presentation oversight and to receive overall agency clearance. I did not consult with anyone at the White House or President Trump’s campaign regarding communication with Fox News either in advance of sending the email or subsequently.

Question 3. Please produce to the Committee copies of all emails sent from your personal or professional email accounts related to NTIA’s Section 230 petition. Please also produce records of any phone calls, text messages, or other contacts you made with personal or professional devices related to the petition.

Answer. Records generated in the course of my official duties are agency records, not in my personal custody. I commit to working with the NTIA’s legislative affairs and general counsel’s office to provide the committee with responsive records, subject to Executive Branch confidentiality interests.

Question 4. In what other activities did you engage to develop support for the Section 230 petition? Please provide complete records of all such activity.

Answer. Records generated in the course of my official duties are agency records, not in my personal custody. I commit to working with the NTIA’s legislative affairs and general counsel’s office to provide the committee with responsive records, subject to Executive Branch confidentiality interests.

To summarize in the interim, I communicated directly with a member of the Fox News staff via one email and one immediately subsequent phone call. I communicated internally within NTIA

about the text of an op-ed to be proposed to the Wall Street Journal, but I had no communications with the Wall Street Journal itself. I spoke briefly in a regularly scheduled meeting of Digital Liberty’s “Friends of Technology,” as discussed in more detail in my letter of November 13, 2020, addressed to you, Chairman Wicker, and Senator Blumenthal. Other than these listed activities, I engaged in no other activities to develop support for the Section 230 petition.

Question 5. Did you have any conversations with staff of Fox News or any other media organization seeking support for your nomination to the FCC?

Answer. I had no such conversations.

Question 6. Please explain what you meant by your comment that the Section 230 petition would “ensure a freer, fairer social media landscape going into the elections this fall. ... This is of concern both to the presidency and also down-ballot”

Answer. The petition describes NTIA’s view that granting the petition will ensure a freer and fairer social media landscape, which in turn will enhance democratic dialogue. I was presenting the views in that email within the scope of my official duties.

Question 7. You were aware in advance of your nomination hearing that various news organizations had filed FOIA requests for your communications related to the Section 230 petition. The email was sent from your official account, and you knew that it would be disclosed as part of any response to these FOIA requests. In light of those facts, please explain why you refused to disclose this information to the Committee either in advance of your hearing or in response to questions from Committee members.

Answer. In the course of my official duties, I comply with all federal recordkeeping laws. That includes ensuring that all agency records are maintained and accessible under the Freedom of Information Act, subject to the statute’s exemptions. I have disclosed to the Committee all the information that was requested of me prior to, during, and after the hearing. I did not refuse to disclose this information, or any other information, to the Committee.

The video record of the hearing will show that, during the course of Senator Blumenthal’s questions about activities in support of the petition, I answered completely, to the best of my ability, consistent with the thrust of the Senator’s questions and with respect for the constraints on each member’s allotted time. I have reviewed my testimony before the Committee, and I confirm that my responses were truthful and accurate.

Question 8. In light of this story, do you still maintain that you had a minimal role in relation to the petition? If you answer in the negative, please explain why you maintained in front of the Committee that you had such a minimal role.

Answer. I had a minimal role in the petition. I believe my role in the petition to be fully reflected in the documentary record, including the emails you cite. In the context of the roles others played, my role was indeed minor.

Question 9. In light of the questions that this report raises concerning your candor with this Committee, would you agree to a request that the majority hold your nomination in abeyance until such time as you have produced the requested materials and made yourself available for additional conversations with the Committee?

Answer. I believe that my answers to the Committee – during my confirmation hearing and as set forth in my responses to questions for the record – are sufficient for the Committee to determine whether to advance my nomination.

Political Independence & FCC Section 230 Rulemaking. In response to a [decision by Twitter](#) to mark two of his erroneous tweets with fact-checking labels, President Trump issued an Executive Order ordering your agency – the Department of Commerce – to file a petition with the Federal Communications Commission to undercut Section 230 and punish tech platforms for engaging in moderation activities.

According to your own testimony in front of the Committee (and subsequent clarification), you had a role in preparing that petition for filing, as well as promoting and defending that petition after filing. And it has been widely reported that FCC Commissioner Mike O’Rielly’s re-nomination was pulled by the White House because he had expressed concerns about the legality and propriety of the executive order and the resulting NTIA petition.

Consumers deserve an independent FCC free from political machinations. And it is equally important for Americans to have confidence that appointees to these commissions act based on the law and the record before them, not at the direction of the president or with a presupposed determination on the outcome of a regulatory proceeding.

Question 10. Do you acknowledge that it would be inappropriate for the FCC to help the White House retaliate against those who express their right to free speech in a manner that angers the President?

Answer. I acknowledge and fully agree that it would be inappropriate for the FCC to help any party (whether the White House or otherwise) to retaliate against any other party for any reason whatsoever. I am not privy to President Trump’s decision-making process that led him to issue the Executive Order on Preventing Online Censorship. I do know that I wholly embrace the opening paragraph of that EO: “Free speech is the bedrock of American democracy. Our Founding Fathers protected this sacred right with the First Amendment to the Constitution. The freedom to express and debate ideas is the foundation for all of our rights as a free people.” If I am fortunate enough to be confirmed, I will be an impartial and independent voice on the Commission and follow the law regardless of the political context.

Question 11. Did you make any commitments to the White House about your ultimate decision in the Section 230 proceeding or any other proceeding before the agency?

Answer. I have made no commitments to the White House or anyone as to my ultimate decisions on any matter if confirmed.

Question 12. How can this Committee be assured that you will act in a fully impartial and independent manner as an FCC commissioner?

Answer. I believe my experience and past record demonstrate my impartiality and independence. I commit to act in a fully impartial and independent manner as an FCC commissioner, if confirmed.

Question 13. How would you respond to those that claim that your role in developing and defending the petition shows that you have a closed mind on this issue, or would approach it predisposed to reject arguments against the FCC acting on the petition?

Answer. First, I refer you to my answer in question 12. Second, I must note that my job as a senior advisor at NTIA was to advocate on behalf of that agency. My job as a commissioner, should I be confirmed, will be to exercise independent judgment – regardless of whether my judgment conforms to that of the Executive Branch and regardless of the party in power. In short, I commit to act in a fully impartial and independent manner as an FCC commissioner.

Recusal. It is standard practice for FCC commissioners – especially newly-confirmed commissioners – to recuse themselves from any proceeding in which they have personally engaged in a substantive manner in their previous role. Previous reports indicated that you played a central role in developing the petition NTIA filed at the FCC proposing changes to section 230 sought by the administration, while more recent reports indicate that you had a key role in developing public and political support for the petition, including by tying the petition to the 2020 presidential election.

Your personal role in advocating changes to the FCC's rules raises serious concerns about your ability to weigh the record in this matter on an impartial basis. Already, a wide cross-section of stakeholders have raised questions about the legal authority of the FCC to adopt rules under Section 230, as well as the appropriateness of the FCC's actions in this matter. But many have doubts whether you will credit these arguments, given that refuting them was central to the petition that you helped craft and promote.

Question 14. Will you commit to this Committee that you will recuse yourself in the pending Section 230 rulemaking, especially in light of the evidence of your efforts to build public and political support for that petition?

Answer. If I am fortunate enough to be confirmed, I pledge to defer to the advice I will receive from appropriate counsel at the FCC on whether I should recuse myself from further participation in the Section 230 proceeding.

Question 15. Mr. Simington, you indicated that you would consult with relevant ethics officials about recusal on this issue. Have you had any such discussions with any relevant ethics officials, including at the White House and the FCC? Would you agree that Congress and the public deserves clarity on this matter prior to this Committee acting on your nomination? Would you request that the majority delay consideration of your nomination until the ethical questions surrounding your role in the section 230 petition are resolved?

Answer. I have not yet discussed recusal with the relevant ethics officials, as such discussions would be premature. I trust that my answers to the Committee – during my confirmation hearing and as set forth in my responses to questions for the record – are sufficient for the Committee to determine whether to advance my nomination.

General Spectrum Policy. The FCC’s spectrum decision-making process may be irreparably broken. Time and time again, the agency has run roughshod over other federal agencies and key stakeholder communities in its quest to hand more spectrum over to commercial wireless companies.

We all understand the importance of making spectrum available for mobile services, including 5G. But the public interest in spectrum cannot always bend toward the wireless companies and away from public safety, national security, science, space, and other essential spectrum uses.

As I said a few months ago when the current members of the FCC appeared before us, the federal government needs a better process for making these spectrum decisions.

And if the FCC cannot be a cooperative part of that process, then Congress may have to think about changes to how spectrum policy is developed.

Question 16. Mr. Simington, given that you claim to have significant experience with federal spectrum issues at NTIA and that agency has questioned several of this FCC’s spectrum moves, do you agree that the consultation process between the FCC and the federal government is broken?

Answer. The relationship between the FCC and the Executive Branch should certainly be improved. I pledge to work with your office and this Committee to improve this process going forward. For example, the memorandum of understanding (“MOU”) between the NTIA and FCC in regard to spectrum management decisions could be updated and clarified. A more robust MOU to address this point could be helpful in assisting the FCC and the Executive Branch agencies in resolving conflicts.

Question 17. You indicated during your confirmation hearing that you believed that the spectrum coordination process could be improved. How would you propose that we fix this process to make sure that public safety, national security, science, and other essential stakeholders have a real voice at the table in these decisions?

Answer. The FCC faces conflicting imperatives, as Congress has directed it to continue commercializing spectrum even as much of the most viable spectrum for commercialization remains committed to public safety, national security, science and other vitally important applications. It should be incumbent upon the FCC to develop a complete record before it makes a decision. I will fully support all efforts by the Commission to make sure that public safety, national security, science, and other essential stakeholders have a real voice at the table in these decisions and that decisions are made that balance these interests in a prompt but thoughtful manner.

Ligado. This is a unique and unprecedented moment for spectrum policy. NTIA – the agency for which you work – along with the entirety of the executive branch believe that the FCC’s approval in April 2020 of Ligado’s terrestrial wireless plans threatens the nation’s GPS system.

I joined a bipartisan letter with 31 of my fellow senators urging the FCC to reconsider and stay its decision given the threat to GPS. NTIA has formally asked the FCC to pause, rethink, and reconsider its decision in light of the significant threat it poses to our nation’s safety and security. And I have received a commitment from two of your potential colleagues at the Commission—Commissioners Rosenworcel and Starks—that they would support a pause on Ligado, as well as the Commissioner that you would replace.

Question 18. Given the unprecedented pushback and the high stakes involved for public safety and the larger economy, would you agree the right course of action is for the FCC to halt Ligado’s plans to deploy its network until these serious concerns about harmful interference to GPS are satisfactorily resolved?

Answer. This is a perfect example of the coordination problems between the FCC and the NTIA. On my review of the Ligado decision, I believe that I have identified process and communication errors that led to the present state of uncertainty. I note that a number of Executive Branch agencies are subject to statutory constraints requiring them, based on their understanding of the Ligado decision, to oppose its outcome. For example, the Defense Department is subject to a statutory prohibition on allowing the GPS network to come to harm. As such, if confirmed, I would immediately undertake such research, outreach, and actions, subject to FCC legal obligations and restrictions, as I would determine to be necessary to address Executive Branch agency concerns.

5.9 GHz and Auto Safety. As I’m sure you’re aware, the FCC’s action to open up the 5.9 gigahertz band to unlicensed uses has generated significant controversy. While I recognize that

demand for wireless spectrum is only growing, the FCC must ensure that we protect critical transportation safety use of this band. It is a key band supporting technologies reducing vehicle-related crashes and potentially saving thousands of lives each year. In fact, the Department of Transportation strongly opposes the FCC action to allow unlicensed use of this band, and had asked the agency to pull the item from its November agenda.

Question 19. Mr. Simington, would you agree that federal spectrum policy is stronger when it is the result of cooperative decision-making between the FCC and impacted federal agencies.

Answer. Yes, I agree. The FCC is subject to the Communications Act in ways that other agencies are not, which may lead to conflicting imperatives between the FCC and such agencies as the Department of Transportation. However, the FCC cannot operate effectively without cooperating to the maximum extent possible with other federal agencies – particularly those impacted by FCC decisions. Federal spectrum policy is greatly harmed when agency conflicts cannot be resolved via interagency process and coordination.

Question 20. Given the controversy surrounding this proposal, would you favor taking a step back on this proceeding and reconsidering the FCC's recent decision until such time as the Department of Transportation's concerns can be adequately addressed?

Answer. I do not have access to the FCC's internal deliberations. However, if confirmed, I would consult with the staff and the other Commissioners in order to formulate a definitive view of the question. I would, of course, be willing to consider any petition for reconsideration that is appropriately before the Commission. I believe that petitioners are entitled to a timely response to their petitions, and that disposing of such petitions – one way or the other – is simply good governance. Once I have an opportunity to examine the record, I would support staying these rules pending action on the petitions for reconsideration where good cause has been shown.

Question 21. The FCC's recent decision in the 5.9 GHz proceeding represents yet another example of the FCC moving forward over the objections of another agency. In this case, it was the Department of Transportation. If confirmed, what would you do to improve the federal spectrum management process and ensure that the FCC conducts spectrum policymaking in a cooperative and collaborative manner?

Answer. This question is important because it speaks to the different statutory standards of accountability between the FCC and the Executive Branch agencies. Ultimately, the FCC is accountable to its statutory standards under the Communications Act. These statutory standards may be incompatible with those of other agencies; as such, the FCC may be legally required to act in a way that is unacceptable to other Executive Branch agencies. This issue highlights the importance of improving legal and technical communication between the FCC and the NTIA and of having the NTIA serve as a greater clearinghouse for Executive Branch concerns. In immediate furtherance of this goal, I would support taking a fresh look at the FCC-NTIA Memorandum of Understanding and of building out institutional and personal communications between the two agencies.

Weather Spectrum. Last year, FCC Chairman Pai chose to move forward on a plan to put spectrum in the 24 gigahertz band to market that failed to adequately protect weather spectrum immediately adjacent to that band. He moved ahead over the objections of the Department of Commerce, NASA, NOAA, and the American Meteorological Society.

This very public, intra-government squabble demonstrated how little Chairman Pai respects the role of other agencies, and specifically the expert science agencies, in the broader federal spectrum management process and how broken that process is. More importantly for this particular slice of spectrum, Chairman Pai's move put critical operations that are key to vital weather forecasting operations at risk.

At the International Telecommunications Union's World Radio Conference in 2019, the international community disagreed with Pai's move and adopted more stringent protections based on sound science and analysis.

But even those more stringent standards may cause damage to important weather forecasting data – as NOAA concluded in a study it recently submitted to congressional appropriators.

Question 22. If confirmed, would you support the FCC immediately adopting the more stringent interference standards agreed to by the international community?

Answer. I do not have access to FCC internal deliberations on this matter. As such, I am not yet in a position to provide an informed judgment on what constitutes a reasonable set of interference standards in this area. I do commit to seeking to obtain that information and taking such steps as are necessary to ensure the adoption of reasonable interference standards.

Question 23. Will you also commit to working collaboratively with NASA and NOAA to find ways to deploy 5G that will minimize the damage to critical weather safety data?

Answer. Yes.

Question 24. Will you also commit to encourage industry to work collaboratively with NOAA and NASA on these issues?

Answer. Yes.

Serving the Public Interest. Mr. Simington, a significant amount of the FCC's work concerns weighing how the proposed action serves the public interest. For example, the FCC uses a public interest standard to determine whether to approve mergers – small and large. The previous FCC based the Open Internet rules – in part – on a public interest analysis. This public interest

standard, in my view, is critical to the FCC's work. The current FCC has contorted this standard to allow for corporate interests – and mega mergers – to prevail.

Question 25. Mr. Simington, what does the public interest standard mean to you and how will it guide you in your decision-making processes as an FCC commissioner, if confirmed?

Answer. If I am confirmed, I will be a strong advocate for the FCC's public interest mandate. As I discussed during my confirmation hearing, the public interest is where telecom's rubber meets the road. For example, I will ensure that the FCC continues to fulfill its obligation to prevent illegal marketing, keep 9-1-1 up to date, improve spectrum management, and restrain unwanted robocalls. Applications to transfer control of licenses and authorizations, like all actions of the FCC, should be reviewed with our public interest mandate at the center of our inquiry.

Question 26. If confirmed as an FCC commissioner, will you pledge to protect the interests of American consumers instead of corporate interests?

Answer. Yes. I pledge to act in the public interest, including protecting consumers, promoting economic growth, and connecting all Americans.

Local News. I released a report a few weeks ago about the decline in local news in the United States, and possible actions policymakers can take to bolster local journalism.

Question 27. The FCC has a role in ensuring the health of the broadcast industry and making sure broadcasters operate in the public interest. In my mind, that public interest obligation should include making investments in truly local journalism. Should you be confirmed, how would you propose to help ensure the health of local broadcast news operations?

Answer. Local broadcasting is a critical component in our media landscape. Promoting competition, diversity and localism are fundamental commission mandates. I am deeply committed to ensuring our policies are consistent with these goals and will do my best to ensure that they are, if confirmed.

Broadcast Consolidation and Deregulation. The current FCC has systematically eliminated a number of longstanding rules designed to preserve the "local" in local broadcasting. For example, it threw out the rule requiring broadcasters to have a studio in their local community, allowing for the nationalization of local news. And it abandoned decades-old limits on broadcast consolidation based on legal analysis so thin that a court called it effectively non-existent.

Question 28. Mr. Simington, localism and diversity have been core tenants of broadcast policy at the FCC. Do you believe that these decisions by the FCC actually further those goals? Are

rampant media consolidation and nationalization of broadcast operations truly consistent with the public interest?

Answer. I have not had an opportunity to review the record in those proceedings, but I share your goals of promoting a vibrant local broadcasting marketplace in all parts of the country.

Tribal Issues. Mr. Simington, our nation's Tribal communities lag far behind everyone else in access to communications services, especially broadband. According to a report issued by the FCC in May 2019, less than half of households in Indian Country have access to high-speed broadband service. This represents a nearly 27-point gap compared to non-Tribal rural areas. According to the same report, this gap only widens when compared to the country-wide average; 31 percent of households on Tribal lands lack access to high-speed broadband service compared to seven percent of Americans in non-Tribal areas. Indian Country has waited long enough for broadband. The FCC needs to do better.

Question 29. Mr. Simington, how would you propose the FCC improve its coordination and consultation with Tribal nations on issues under its jurisdiction?

Answer. I commit to fully engage with the FCC's Office of Native Affairs and Policy and the Native Nations Communications Task Force, and such other assets as are appropriate and necessary, to improve the agency's coordination and consultation with Tribal nations on issues under its jurisdiction.

Question 30. Mr. Simington, Tribal stakeholders have complained for years that the FCC's universal service programs consistently underinvest in improving communications networks on Tribal lands. Legislation that I crafted with Senator Udall, which just advanced through the Senate Committee on Indian Affairs, would help rectify this underinvestment by dedicating at least five percent of universal service funds to Tribal lands. Do you support this legislation? What steps should the FCC take to make sure that move universal service money is dedicated to the needs of our Tribal communities?

Answer. The FCC has provided increased support on tribal lands, through increased Lifeline subsidies and through the Rural Tribal Priority Window in the 2.5 GHz band, but clearly more support is needed considering the persistence of a severe digital divide in Indian Country. I fully support further efforts – whether through legislation or action at the FCC under existing authority – to ensure that Tribal communities bridge the digital divide.

Question 31. Mr. Simington, the Government Accountability Office issued a report a few years ago noting that one of the reasons the FCC has underinvested in Tribal lands is the poor data it collects on broadband availability and the maps it generates as a result. As you know, Congress just passed legislation to reform the FCC's broadband data collection and mapping. Would you agree that the FCC should pause distribution of a significant portion of its universal service

Connect America Fund money until its maps are reformed and we better understand the broadband gap in this country?

Answer. I believe that closing the digital divide is one of the most pressing issues facing our nation today. I further believe that the current Commission has struck an appropriate balance between the need to move quickly and the need to gather more accurate data. I will, if confirmed, support all efforts the Commission may make to gather complete and accurate data to support efforts to close the broadband gap. The situation on Tribal lands illustrates the tension between speed and accuracy. It is almost certainly the case that fewer people on Tribal lands will gain connectivity if Connect America Fund monies are distributed on the basis of current mapping than they would be on the basis of improved mapping. However, improved mapping will delay buildouts, meaning that no one will gain connectivity during the interval in which improved maps are prepared.

E-Rate and Rural Health Care Programs. Mr. Simington, as I hope you are aware, the FCC's E-Rate and Rural Health Care programs have been very successful in connecting the nation's schools, libraries, and rural healthcare facilities to broadband. In fact, I and my colleagues have argued that the FCC needs to leverage the success of these two programs to further expand broadband connectivity during the ongoing COVID-19 crisis for remote learning, telehealth, and to help close the digital divide in many of our communities.

Question 32. Mr. Simington, in the information you provided to the Committee, you have suggested that one of the major contributions you think you can make to the FCC is to help better manage universal service. Many of us in Congress believe, however, that the E-Rate and Rural Health Care programs are highly successful now. Would you commit to taking no steps as a Commissioner that would undermine, undercut or underfund these two programs?

Answer. Yes.

Written Questions Submitted by the Hon. Amy Klobuchar to Mr. Nathan Simington.

Accessible, Affordable Internet for All Act. A recent study found that 17 million K-12 students do not have access to high-speed internet and 7 million do not have computers at home. My bill—the Accessible, Affordable Internet for All Act— includes dedicated funding to enable schools and libraries to make use of Wi-Fi hotspots and devices (such as laptops and tablets) to help students learn from home.

Question 1. Do you believe the FCC is doing enough to ensure that students are connected to high-speed internet during the pandemic?

Answer. I believe there is always room for improvement in government programs, E-Rate included. The pandemic has only underscored the importance of keeping students connected. If confirmed, I look forward to working with this Committee and my fellow commissions to looking at ways to modernize the program.

Question 2. If confirmed, what would you do to ensure we connect every student to high-speed internet, and will you commit to supporting efforts to improve the E-Rate program?

Answer. I commit to supporting efforts to improve the E-Rate program. I will support such actions as are authorized under the Communications Act to ensure that that students are connected to high-speed internet, during the pandemic and beyond.

T-Mobile/Sprint Merger. Last October, the FCC voted along party lines to approve the proposed merger of T-Mobile and Sprint. As Ranking Member of the Antitrust Subcommittee and a member of this Committee, I repeatedly raised concerns about the harmful effects of eliminating one of the only four nationwide wireless network operators. The Trump Administration’s settlement with T-Mobile recognized that the transaction posed a threat to mobile competition and required the sale of certain assets to Dish Network, a satellite television provider with no existing mobile network.

Question 3. In your view, what impact will having only three nationwide wireless carriers have on our country’s ability to deploy 5G?

Answer. I believe the FCC and the DOJ correctly assessed that Dish has every incentive, and the ability, to enter the U.S. wireless market as a fourth nationwide facilities-based network competitor. I strongly believe in facilities-based competition and fully intend to support policies that drive investment, innovation, and competition in the wireless market.

Question 4. If confirmed, what actions will you take to ensure that T-Mobile and Dish honor their commitments to the FCC and that Dish actually emerges as a viable mobile network operator?

Answer. If confirmed, I will ensure, to the extent of my ability as an individual Commissioner, that T-Mobile and Dish honor their commitments to the FCC. The public interest would be well served by the emergence of Dish as a full-fledged facilities-based network competitor.

Written Questions submitted by the Hon. Richard Blumenthal to Mr. Nathan Simington.

Section 230. During your November 10 nominations hearing, I asked you whether you had presented at Americans for Tax Reform in defense of the NTIA’s petition on Section 230. Your response at the time was: “No, I’ve never presented, I’ve never given any kind of formal presentation or address to the Americans for Tax Reform.” Additionally, you stated that you had “played a minor role in drafting the petition.”

In a November 13 letter, you acknowledged that you had spoken at an event put on by Digital Liberty on August 7 (after the petition was sent to the FCC), indicating that you spoke “for five minutes on the topic ‘NTIA’s CDA 230 Petition’ ... to outline the rulemaking requested under the NTIA petition.” You wrote that you were “unaware that Digital Liberty is affiliated with ATR.” The first sentence of the “About Us” page of Digital Liberty is “Digital Liberty is a project of Americans for Tax Reform that advocates for free market technology, telecommunications, and media policy.”

Additionally, according to emails obtained by Politico through a Freedom of Information Act request, you also coordinated outreach to Fox News, attempting to encourage host Laura Ingraham to support the order, writing “this is of concern both to the presidency and also down-ballot” and to push the FCC. Finally, in another email, Deputy Assistant Secretary Adam Candeub described your role as “instrumental in drafting these regs.”

Question 1. Please describe in full your role with respect to the NTIA’s petition and subsequent engagements on Section 230, including in drafting, outreach, media, agency coordination, and other participation, before and after submission of the petition.

Answer. Beginning in June 2020, the Deputy Acting Secretary of the NTIA informed me that I would be working on the petition. He furnished me with his initial draft about two weeks after I joined the NTIA. My assignments consisted of sourcing and identifying items in the news regarding relevant complaints about the restriction of speech on social media; researching the cost structures, information content, and moderation policies of proprietary online services of the 1990s; reviewing drafts for completeness, consistency, and correctness; and reviewing sources cited in order to ensure that they were characterized fully and correctly.

Question 2. During your nomination hearing, in response to a question from Chairman Wicker, you stated that you would “estimate that the number of words actually written by me in the petition would be on the order of 5 percent to 7 percent.” What is the 5-7% of the petition that you wrote?

Answer. The material in the petition originally drafted by me is found primarily on pages 6-7 (current controversies over content moderation on social media,) 9-13 (characterization of proprietary online services and contemporary social media company business models,) and 43-44 (examples of inconsistent and unpredictable standards for content moderation on contemporary social media.)

Question 3. Given that you told Chairman Wicker, “I didn't draft any of the original versions of the petition,” when Mr. Candeub wrote that you were “instrumental in drafting these regs,” was he wrong?

Answer. I would like to think that I was a valued contributor to the team that produced and managed that petition, but I did not draft the original version either of the petition or of the regulations. My job at NTIA was to advance the policy views of the Administration. That is what I did on Section 230, just as with all other matters that I worked on.

Question 4. What was the purpose behind participating in the Digital Liberty roundtable, given that the NTIA's petition had already been submitted to the FCC?

Answer. I engaged in limited advocacy in the ordinary course for general support of the petition. Such advocacy is part and parcel of the role I serve in at NTIA.

Question 5. Please list all meetings, whether public or private, that you have solicited or held with non-Federal government entities regarding the NTIA petition on Section 230.

Answer. The only such meeting I have to report is the Digital Liberty roundtable previously discussed.

Question 6. Why did you seek to promote the NTIA petition on Section 230 on the Wall Street Journal and Fox News, and did you approach any other media outlets in this effort?

Answer. I engaged in limited advocacy in the ordinary course for general support of the petition. Such advocacy is part and parcel of the role I serve in at NTIA. I did not approach the Wall Street Journal myself, and other than these two media outlets, I did not approach or discuss approaching any others.

Question 7. Based on FOIA requests, Politico has portrayed you as having been actively involved in the drafting of the Op-Ed that was written for the Wall Street Journal. Please provide the draft Op-Ed, describe your involvement, and explain why the Op-Ed wasn't placed.

Answer. Records generated in the course of my official duties are agency records, not in my personal custody. I commit to working with our agency's legislative affairs and general counsel's office to provide the committee with responsive records, subject to Executive Branch confidentiality interests. I have no information as to why the Op-Ed was not placed.

Question 8. You stated that you had "not discussed plans, [or] any contemplated future action of the FCC on the part of 230 with the White House" but acknowledged discussing Section 230 with members of the Presidential Personnel Office while you were under consideration for the FCC nomination. Please describe the conversations regarding Section 230 you had with the White House or these members of the Presidential Personnel Office specifically.

Answer. I had a conversation about a variety of topics with members of the Presidential Personnel Office, including about my work at NTIA. Section 230 was part of that discussion. I told the Presidential Personnel Office that Section 230 was an important part of America's online freedom regime and that any legislative and regulatory reforms must be thoughtful and careful so as not to undermine the positive aspects of Section 230 as a law. However, this conversation was limited to my general views on Section 230. It did not include any discussion of plans or contemplated future action of the FCC relating to Section 230.

Question 9. According to the email you sent to Fox News, you believe that the Section 230 petition was important for the electoral prospects of the President and Republican candidates. Please explain why the NTIA, a federal agency responsible for telecommunication policy, acted to specifically benefit Republican electoral prospects.

Answer. The petition describes NTIA's view that granting the petition will ensure a freer and fairer social media landscape, which in turn will enhance democratic dialogue. I was presenting the views in that email within the scope of my official duties.

Question 10. During the hearing, you declined to commit to recusing yourself from any matters involving the NTIA Petition on Section 230. Do you maintain the position that you will not commit to recusal?

Answer. If fortunate enough to be confirmed, I pledge to defer to the advice I will receive from appropriate counsel at the FCC on whether I should recuse myself from further participation in the Section 230 proceeding.

Question 11. One of the most important duties of a commissioner on an independent regulatory body is to approach issues with an open mind, and to make decisions based upon the record

before the agency (not one's predisposed position). Given your role at NTIA—and now acknowledged commentary and potentially advocacy on behalf of the petition and its partisan political implications—how can the public be assured that you can approach the FCC rulemaking on this matter in an open and neutral manner consistent with the duties of a Commissioner? Doesn't that fact alone suggest that you should recuse yourself from this matter?

Answer. My answers to this Committee, verbally and in writing, have been complete and correct to the best of my knowledge and ability. I must note that my job as a senior advisor at NTIA was to advocate on behalf of that agency. My job as a commissioner, should I be confirmed, will be to exercise independent judgment – regardless of whether my judgment conforms to that of the Executive Branch and regardless of the party in power. In short, I commit to act in a fully impartial and independent manner as an FCC commissioner.

Question 12. In the Restoring Internet Freedom Order, the FCC twice stated “we also are not persuaded that section 230 of the Communications Act is a grant of regulatory authority that could provide the basis for conduct rules here.” Given the legal argument you have represented in the NTIA petition, why would the FCC not have the authority to write rules for net neutrality and other matters involving Title I services under Section 230?

Answer. The General Counsel of the FCC has outlined the FCC's view as to why it is proper to accept jurisdiction. If confirmed, I would examine the record and reach my own conclusions about the proper role of Section 230 as to the petition and any other FCC proceedings.

Rivada Networks. On September 18, the Department of Defense released a request for information (RFI) on “innovative solutions and technologies for dynamic sharing of the department's current spectrum allocation to accelerate spectrum sharing and 5G deployment.” This RFI has raised concerns that the DOD is considering a proposal by the company Rivada Networks to create a wholesale 5G network using DOD spectrum holdings.

Question 13. What discussions have you had within the NTIA or with other government agencies, including the Office of the President, regarding the Rivada Networks' proposal to use, wholesale, or share DOD spectrum holdings for commercial wireless purposes?

Answer. None.

Question 14. Do you support Rivada Networks' calls for the creation a wholesale 5G network based on DOD spectrum holdings? Do you support DOD issuing a Request for Proposals that would facilitate DOD utilizing Rivada's approach to spectrum sharing?

Answer. I support the auction regime that has been legislated by Congress. Some sort of grant regime to establish a nationalized network would contradict the manner in which the U.S. won the race to 4G. It is also unclear how a DOD 5G network could be commercialized, legally

speaking. Spectrum is not a network; I am not sure the prospects of nationalizing 5G is a real threat, but we should not create uncertainty in the marketplace by leaving the idea out there.

Question 15. Do you believe that it is appropriate for DOD spectrum assets to be leased or reused for a commercial wholesale network by a private sector company? Do you believe that DOD has the legal authority to engage in such activity without NTIA or FCC authorization?

Answer. I think the idea of some sort of nationalized commercial network using DOD spectrum is a distraction from the important work that the FCC and the rest of government needs to do to give American industry the tools they need to lead the world in 5G.

Question 16. Please describe any work you have done on this matter at the NTIA.

Answer. None.

C-Band. On February 28, the FCC voted on a 3-2 basis to reallocate and auction 280 Megahertz of the 3.7-4.2 GHz Band for the purpose of commercial wireless services. This C-Band spectrum is currently used for satellite transmissions, and satellite companies have opposed plans to move or repack their operations.

As a part of this transition, the FCC proposed to offer incumbent satellite operators the option to accelerate their move in exchange for payment of their relocation costs—as much as \$5.2 billion—plus a \$9.7 billion accelerated relocation payment. Critics of this arrangement have questioned the legal basis for and appropriateness of such transactions. I would appreciate your view and expertise given your background in telecommunication regulations and procurement law.

Question 17. Do you believe that the FCC has the authority to require in auction rules that winning bidders financially remunerate incumbent satellite operators over and above their relocation costs, as required under the February Order?

Answer. I have not had an opportunity to review the record on this complex matter, nor have I had the benefit of briefings from stakeholders on these issues. If confirmed, I would educate myself on all of these matters and render an independent and impartial judgment if this issue is placed before me.

Question 18. Do you believe that the decision to pay incumbent satellite operators nearly \$10 billion dollars is an appropriate use of revenue that would otherwise go to rural broadband deployment or to the U.S. Treasury?

Answer. I have not had an opportunity to review the record on this complex matter, nor have I had the benefit of briefings from stakeholders on these issues. If confirmed, I would educate myself on all of these matters and render an independent and impartial judgment if this issue is placed before me.

Question 19. Please describe any work you have done on this matter at the NTIA.

Answer. I have not worked directly on the C-Band auction. Most of the NTIA's policy work on this matter was complete prior to my joining the NTIA. I have not worked on the very recently-arising matters involving concerns about altimeters relating to C-Band interference.

Ligado Networks. On April 20, the FCC unanimously approved an application by Ligado Networks to deploy a low-power terrestrial nationwide network in the band used by GPS operators. The Department of Defense and other federal agencies opposed this decision, citing concerns about interference with existing GPS receivers. In response to a question from Senator Lee, you stated that the FCC followed its statute and obeyed its legal standard. I appreciate your background knowledge on this matter, and willingness to discuss it with the Committee.

Question 20. Do you support the FCC's unanimous approval of the Ligado Networks petition or would you act to stay the Ligado decision?

Answer. Serious potential real-world harms have been credibly alleged regarding implementation of the systems permitted by the license revisions granted under the petition. I have not had the opportunity to review FCC internal deliberations and engage with FCC technical experts. Considering the seriousness of the alleged harms, if confirmed, I would make review of the full Ligado record a top priority.

Question 21. Do you believe that the standard of "harmful interference" used in the FCC decision was the correct standard for evaluation of the petition?

Answer. The "harmful interference" standard used by the FCC is found in 47 CFR § 2.1(c). This definition is identical to that found in the International Telecommunication Union (ITU) Radio Regulations. It is possible that the FCC's standard could be further refined in the future.

Question 22. Do you believe the mitigation measures required by the FCC are adequate toward addressing concerns related to interference with GPS receivers?

Answer. I do not have a settled view of the technical questions raised – and indeed, there appears to be a split among US Government technical experts on this question. If confirmed, I will make

it a priority to require US Government technical experts to further develop the record so that Congress and the FCC do not have to pick sides in a politicized conflict.

Question 23. How would you propose to resolve the disagreement between the DOD and the FCC?

Answer. I have spoken to senior DOD figures at some length about both revisions to their testing regime and potential legal strategies to employ. I believe that ultimately, there must be a meeting of the minds among technical experts, which must be reflected by legal and policy decisions informed by both technical information and respect for the mandates given to the respective agencies by Congress.

Question 24. Please describe any work you have done on this matter at the NTIA.

Answer. Ligado was the first item that I reviewed and briefed upon joining the NTIA. I read the report and order, the publicly available technical materials, and relevant procedural materials in order to explain the ruling and its significance to the Office of the Assistant Secretary. Subsequently, I did a further technical and legal review in order to develop recommendations for the Department of Defense on legal and evidentiary strategies for the currently pending petitions for stay and reconsideration.

Lifeline. The Coronavirus pandemic and social distancing are a resounding demonstration of the importance of Lifeline. In normal times, Lifeline is underutilized—and those that depend on the program say that the benefits are not as robust as they should be given the pressing need for broadband in our daily lives. During a pandemic – when schools are shut down, businesses are limited, and thousands of families face new economic challenges – a robust Lifeline program is more essential than ever so that people have the ability to communicate and stay connected.

As a result of a Wireline Competition Bureau order released on November 18, Lifeline’s Minimum Service Standards will now increase by 1.5 Gigabytes per month. Chairman Pai has supported such an increase in the standard, but other Commissioners have supported a pause-and-study approach out of concern about the impact of such an increase. There is a real possibility of Lifeline becoming unsustainable or less competitive if assumptions, possibly made based on poor data, prove to be inaccurate.

Question 25. Do you support increasing the minimum service standards as the Wireline Competition Bureau did on November 16?

Answer. I do not have sufficient information to provide an informed judgment on the appropriate minimum service standards. I do understand, however, that absent WCB action on November 16, the minimum service standards would have been significantly more difficult for non-facilities-based providers to meet. I fully support any effort to improve the Lifeline program as a means of closing the digital divide.

Question 26. The FCC established the National Verifier to cut down on waste, fraud, and abuse – and to make it easier for those who do need Lifeline to access it. This is a goal I think we all share. However, the Verifier still lacks access to key eligibility databases and needs urgent support. How would you fix the Verifier system?

Answer. I fully support the National Verifier system, and look forward to reviewing and, to the extent necessary, developing the record to improve its functionality. I will support any effort to reduce waste, fraud and abuse in this critical program.

Question 27. Unfortunately, many eligible subscribers who could benefit from the Lifeline program are unaware that it exists. Only 7 million subscribers are enrolled in Lifeline while approximately 38 million are eligible. Please list three steps you would take to improve Lifeline to meet the needs of those families who need it.

Answer. I am deeply committed to closing the digital divide. I will support and actively advocate for any Commission efforts to improve Lifeline to meet the needs of those families who need it.

1. I support efforts by the FCC and other parts of government to publicize the availability of Lifeline-supported services.
2. I support ensuring that Lifeline providers meet their obligations to advertise their Lifeline services.
3. I support efforts the Commission may take to close the digital divide and improve awareness of the Lifeline program.

E-Rate. On March 16, Senator Markey, myself, and sixteen Senate colleagues wrote to the FCC asking the Commission to help provide connectivity under the agency’s E-Rate program for students engaged in remote learning during the pandemic. We asked the FCC to temporarily allow E-Rate funding to be used to provide home wireless devices and hotspots to students. Chairman Pai, however, has refused to interpret the Communications Act to allow schools to support their students in these challenging times — taking an unnecessarily limited view on the agency’s authority that is not shared by all Commissioners.

Question 28. What is your position on whether the FCC can re-interpret the definition of “classroom” under the statute, or otherwise waive rules under emergency authorities, in order to allow schools to use E-Rate funding to provide devices and broadband internet access services to students learning from home?

Answer. If confirmed, I look forward to reviewing the record and the law on the question of whether Section 254 precludes using E-Rate funding for that purpose. Learning in the home is

more important than ever. I commit to engaging with my colleagues and the staff at the FCC to determine what our statutory authority is in this area.

Question 29. Please list three steps that the FCC should take right now to address the Homework Gap – to support Connecticut families who do not have broadband due to its high cost.

I have clearly stated my commitment to closing the digital divide. I will support and actively advocate for any Commission efforts to improve E-Rate – and Lifeline – to meet the needs of those families who need it.

1. Applicants are entitled to clear and timely determinations regarding their eligibility for funding. It's critically important that applicants and providers understand the rules of the game up front, and that those rules not be changed midstream.
2. I support improving the administration of the E-Rate program through improved oversight of USAC.
3. I support efforts by the Commission to close the digital divide, including efforts to raise awareness and the effectiveness of Lifeline and E-Rate.

Answer.

5.9 GHz. In September 2020, the NTIA filed a letter with the FCC supporting the FCC's concept of reallocating parts of the 5.9 GHz band for use in Wi-Fi networks. The Department of Transportation opposed this proposal, arguing that the 5.9 GHz Band should be reserved for existing automotive safety purposes. On November 18, the FCC decided to move forward with plans to reallocate more than half of the 5.9 GHz band over the concerns of the DOT.

Question 30. Do you agree with the FCC's decision to open up the 5.9 GHz band for Wi-Fi use based on its proposed arrangement?

Answer. As discussed above, I would, of course, be willing to consider any petition for reconsideration that is appropriately before the Commission. I believe that petitioners are entitled to a timely response to their petitions, and that disposing of such petitions – one way or the other – is simply good governance. Once I have an opportunity to examine the record, I would support staying these rules pending action on the pending petitions for reconsideration where good cause has been shown.

Question 31. Please describe any work you have done on this matter at the NTIA.

Answer. I have not worked on this matter. The affected spectrum is not allocated to the federal government, so it is not regulated by the NTIA.

24 GHz. The FCC auctioned licenses to the 24 GHz band during its "Spectrum Frontiers" proceeding in early 2019, describing the auctions as important for the race to 5G. Since then, the

National Oceanic and Atmospheric Administration (NOAA) and NASA have complained that the FCC's plan could severely interfere with weather satellite transmissions. The dispute between NASA, NOAA, the Department of Commerce, and the FCC brought in the NTIA to mediate between different positions.

Question 32. Do you believe the 24 GHz auction will cause harmful interference to weather satellites?

Answer. I do not have sufficient information to provide an informed judgment on what constitutes a reasonable set of interference standards in this area, but commit to seeking to obtain that information and taking such steps as are necessary to ensure the adoption of appropriate standards.

Question 33. What steps do you think the FCC should have taken to avoid conflict between weather forecasters, federal agencies, and commercial spectrum needs?

Answer. I am not familiar enough with the record in this proceeding to identify specific steps the FCC might have taken, but I pledge to work with your office and this Committee to improve this process going forward. For example, the MOU between the NTIA and FCC in regard to spectrum management decisions could be updated and clarified. A more robust MOU to address this point could be helpful in assisting the agencies in resolving these types of conflicts.

Question 34. Please describe any work you have done on this matter at the NTIA.

Answer. None.

USF Reform. You state in your questionnaire that “My expertise in telecommunications finance will help the FCC in its mission to make the most of the [Universal Service Fund] in order to benefit all Americans, including those whose communities are currently underserved or for whom access is prohibitively expensive.”

USF reform is likely to come up soon. The USF Contribution Factor is now 27% (and is projected to exceed 30 percent in the first quarter of next year), a dramatic increase in the past four years. At the same time, demand for these programs is increasing – especially during this national crisis.

Question 35. What specific steps would you propose to reform the USF contribution mechanism and make sure programs like E-Rate and rural healthcare have the funds they need to meet demand?

Answer. The USF Contribution Factor is not sustainable over the long term. If confirmed, I look forward to working with Congress and my potential colleagues at the FCC and on the Joint Board to determine what specific steps we need to take to ensure the FCC fulfills its obligations under section 254 of the Communications Act.

Question 36. Do you support expanding the Rural Healthcare Fund and, if so, how do you plan to fund such expansions?

Answer. I support the Rural Healthcare Fund and commit to determine what specific steps we need to take to ensure the FCC fulfills its obligations under section 254 of the Communications Act.

Question 37. Do you believe the FCC has appropriately overseen and taken proper enforcement actions within the Rural Healthcare Fund to protect against waste, fraud, and abuse by carriers?

Answer. I support the Rural Healthcare Fund and commit to determine what specific steps we need to take to ensure the FCC fulfills its obligations under section 254 of the Communications Act, including prevention of waste, fraud, and abuse. I support greater transparency, responsiveness and expeditiousness in adjudicating such cases so that enforcement actions are more effective in cases of waste, fraud, and abuse and so that carriers are not disincentivized from participation out of fear of becoming embroiled in a lengthy and uncertain dispute process.

Written Questions submitted by the Hon. Jon Tester to Mr. Nathan Simington.

Question 1. If confirmed, you will serve in the minority at the FCC, a position that demands collaboration and compromise. Describe a policy achievement from your time at NTIA that faced initial opposition from your leadership.

Answer. The NTIA is one of many peer organizations worldwide involved in the Government Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN). Recently, the GAC found itself confronted with a proposed governance change at ICANN that would make the process of determining website ownership much slower, much more burdensome, and much less certain. However, there was significant concern within NTIA leadership about the difficulties of building international consensus against these changes, because they were motivated by compliance concerns with the European Union's General Data Protection Regulation (GDPR). Therefore, in order to resist the proposed ICANN changes, I had to build consensus within the NTIA and within the US government that vital national interests were at stake and that non-American members of GAC would support our proposed approach in defending them.

I took the lead role in analyzing the changes and their likely implications for a long list of concerned American parties, including individual plaintiffs, national security, law enforcement, child welfare organizations, intellectual property owners, technology-sector companies, and pharmacy boards. After drawing together the excellent work in identifying and publicizing these concerns that had already been done by members of Congress and representatives of federal agencies, the NTIA decided that national and international consensus was a strategy that could win and needed to be attempted. NTIA succeeded first in building internal consensus within the US Government, then international consensus among non-American members of GAC, to obtain a forceful and detailed denunciation of the proposed changes. These criticisms now have the imprimatur of the international community as a whole and are part of the permanent decision record. They will be the basis for further American resistance and have preserved our non-consent as a basis for future American policy.

Question 2. I am pleased to see the FCC is waiting for updated Broadband Data Maps before distributing \$9 billion with the 5G Fund. What does the FCC need from Congress to ensure that the Fund proceeds as accurately and expeditiously as possible?

Answer. Consistent with FCC requests, Congress must provide the FCC funding sufficient to fulfill its obligations under the Broadband DATA Act.

Question 3. I am concerned that it will be far easier to upgrade 4G infrastructure than to build 5G from scratch in places without service. When carrying out the 5G Fund, what will you do to ensure that carriers prioritize unserved areas over places that already have decent 4G coverage?

Answer. In my view, the 5G Fund appears to be structured to address exactly this question because of its prioritization of areas lacking coverage. Between the 5G Fund, the merger conditions set forth in the T-Mobile/Sprint order, and Dish Network's obligations, we expect that 5G coverage will be nationwide in reasonably short order.

Question 4. Indian Country is far behind the rest of the nation when it comes to connectivity: according to a 2019 FCC study, just 47% of households in rural Tribal areas have access to a home broadband internet connection, compared to 94% of Americans overall. The FCC's Tribal broadband factors and set-asides in the universal service programs have made little meaningful progress toward closing the Tribal digital divide. What new ideas will you bring to this challenging problem?

Answer. I commit to fully engage with the FCC's Office of Native Affairs and Policy and the Native Nations Communications Task Force, and such other assets as are appropriate and necessary, to improve the agency's coordination and consultation with Tribal nations on issues under its jurisdiction.

Written Questions submitted by the Hon. Kyrsten Sinema to Mr. Nathan Simington.

Broadband Mapping. Earlier this year, Congress passed the Broadband DATA Act to address issues with broadband data collection and mapping efforts. According to a GAO report published on October 1, FCC officials noted the FCC could not begin collecting new data until Congress appropriates funding for this work. Recently, the FCC established rules for its 5G Fund for Rural America, which will distribute up to \$9 billion over the next decade and the FCC has moved ahead in the Rural Digital Opportunity Fund auction to award up to \$16 billion.

Question 1. What will you do to ensure mapping data used by the FCC adequately reflects broadband availability prior to distribution of this funding?

Answer. The difficulty with mapping has come from the fact that responsibility for mapping efforts has resided in different agencies. There has not been a uniform clearinghouse or even a uniform set of standards for defining what service levels constitute broadband. I hope that, with its new mandate under the Broadband DATA Act, the FCC can serve as the clearinghouse for precise and accurate broadband deployment data to inform the appropriate priority distribution of USF funding.

Question 2. Have you previously worked on issues concerning broadband mapping? If so, please explain.

Answer. The OTIA office at NTIA coordinates and manages the ABI relationship and the National Broadband Availability Map (NBAM). I have worked on analysis and evaluation of mapping policy to explore ways of using NBAM, which is a unique federal resource. My work on this includes looking at mapping best practices to coordinate mapping through the Federal Funding Workstream's Mapping Subgroup to assess and integrate federal information from a variety of sources, including the DOI Bureau of Land Management and the USDA Forest Service, and to provide NBAM data to such recipients as the USDA Rural Utilities Service, the DOC Economic Development Administration, and the Appalachian Regional Commission.

Tribal Broadband. 18 percent of tribal reservation residents have no internet access at home, wireless or land-based. Further, 33 percent rely on internet service from a smartphone at home. I worked with the FCC to ensure the tribal priority filing window for the 2.5GHz band. This was an opportunity never before offered to Tribes and was a great step in the direction to address the broadband gap that has existed in Indian Country for far too long. Ultimately, 12 of the 22 Tribes in Arizona received licenses.

Question 3. Will you utilize priority filing windows for Tribes in future spectrum auctions? If so, how will you determine which spectrum auctions will have a priority filing window for Tribes?

Answer. I would be delighted to explore ways to utilize a Tribal priority window going forward. There has also been controversy over the length of the priority window. The tradeoff is between shorter windows to allow quicker building and longer windows to allow more participants. We

should do better outreach to Tribes earlier in the process to maximize the impact of this program and allow shorter windows to be more effectively used.

Question 4. How will you and the Office of Native Affairs and Policy (ONAP) work with tribal communities eligible for spectrum band auctions to provide robust consultation with Tribes and ensure Tribes have all needed resources to apply to these licenses?

Answer. I commit to fully engage with the FCC’s Office of Native Affairs and Policy and the Native Nations Communications Task Force, and such other assets as are appropriate and necessary, to improve the agency’s coordination and consultation with Tribal nations on issues under its jurisdiction.

Question 5. Have you previously worked to help close the digital divide in Indian country? If so, can you discuss specifically how you worked with tribal governments and tribal communities to ensure robust consultation?

Answer. In my current position, I have advised on facilitating Tribal collaborations with middle mile broadband service providers and improving the application process for the FCC’s 2.5 GHz spectrum license auctions.

Homework Gap. In Arizona, as many as 350,000 households – 13 percent of all households in the state – don’t have an internet subscription. The internet is a necessity for Arizona students to access online learning, especially during the COVID-19 crisis. The E-rate program works to ensure students have equal access to education and communication networks throughout this national emergency.

Question 6. Do you believe E-Rate can help tackle the Homework Gap for students that lack reliable internet access?

Answer. I have clearly stated my commitment to closing the digital divide. I will support and actively advocate for any Commission efforts to improve E-Rate – and Lifeline – to meet the needs of those families who need it.

Question 7. What, if any, changes would you make to the E-Rate program to help the program advance its mission?

Answer. I am deeply committed to closing the digital divide. I will support and actively advocate for any Commission efforts to improve E-Rate – and Lifeline – to meet the needs of those families who need it.

Section 230. As you know, in May, the Administration ordered NTIA to file a petition with the FCC, requesting the FCC to moderate online content through Section 230 of the Communications Decency Act. On July 27, 2020, NTIA filed a petition requesting the FCC initiate rulemaking to clarify provisions of Section 230.

Question 8. You started as a Senior Advisor for NTIA in June 2020. What was your involvement with this petition and with other NTIA activities related to Section 230?

Answer. As stated during my confirmation hearing, I played a minor role in drafting the petition. The substantial legal arguments had been outlined before I joined NTIA, but I helped finalize the petition. I also engaged in routine advocacy for earned media support of the petition, including the emails cited by other senators. Such advocacy is part and parcel of the role I serve in at NTIA, and in the context of the roles others played, my role was minor. Once it became clear I would be considered for this nomination, I ceased any active work on the petition.

Question 9. In your view, what is the extent of the FCC's authority to enforce or interpret Section 230 of the Communications Decency Act?

Answer. If confirmed, I would examine the record and reach my own independent and impartial conclusions about the proper role of Section 230 in any proceedings that come before me. In particular, I would want to be certain that there are no compelling objections to the FCC's rulemaking authority. I note that the FCC's General Counsel has determined that rulemaking is permissible, but considering the complexity and contentiousness of the question, and continued opposition to rulemaking, I would want to have absolute certainty on the matter myself prior to considering the substance of any such items as might arise on the FCC's agenda.