Senator Deb Fischer
Written Questions for the Record to
The Honorable Meredith Attwell Baker
"Protecting the Internet and Consumers through Congressional Action"
Senate Committee on Commerce, Science, and Transportation
Wednesday, January 21, 2015

Question 1 – Ms. Baker – In 2010, the FCC chose a light-touch mobile-specific approach to Open Internet rules. This allowed Americans to benefit with record-setting investment and innovation throughout the entire mobile ecosystem. Since then, applications have increased by 347 percent, data traffic has increased 732 percent, and video traffic has increased 733 percent. Do you think Chairman Thune's draft legislation sufficiently takes the differences of wireless technologies into account so as not to disrupt the incredible growth we are seeing in your industry and that consumers have come to expect and demand? What might be the consequences on consumers if we don't give flexibility to wireless operators to manage their networks?

> Congressional action is the best path to preserve an open Internet and enable mobile broadband providers to continue investing billions, creating jobs, and bringing innovative products to consumers. The draft legislation is an excellent start, and we look forward to working with Chairman Thune and other members of the Committee to ensure that the legislation reflects the unique technical and operational challenges that mobile broadband providers face in dynamically managing their networks in real time. These challenges include reliance on a finite amount of spectrum, consumer mobility (which means a constantly fluctuating number of users in each cell site), hundreds of different handsets with different capabilities, a variety of technology platforms across multiple spectrum bands, and each user's constantly changing channel conditions, to name a few. These challenges demand complex and dynamic network management. To continue providing Americans with increasingly faster speeds and mobile Internet access anytime and anywhere, wireless providers must have the flexibility to manage their networks so that all users enjoy the highest quality service experience. Legislation should also reflect the highly competitive and innovative wireless marketplace.

Question 2– To All Witnesses – While the FCC is in the process of ensuring net neutrality, some want the FCC to impose all of these obligations under the guise of ensuring consumer protection. Some argue that common carrier requirements on broadband providers should include almost most all of Title II, in addition to Sections 201, 202, and 208. Specifically, some activists have suggested the following parts of Title II must be applied to the broadband industry:

UNIVERSAL SERVICE
Sec. 214. [47 U.S.C. 214] Extension Of Lines
Sec. 225. [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals.
Sec. 254. [47 U.S.C. 254] Universal Service.
Sec. 255. [47 U.S.C. 255] Access by Persons With Disabilities.

CONSUMER PROTECTION
Sec. 217. [47 U.S.C. 217] Liability of Carrier for Acts and Omissions of Agents.
Sec. 222. [47 U.S.C. 222] Privacy Of Customer Information.
Sec. 230. [47 U.S.C. 230] Protection for Private Blocking and Screening of Offensive Material.
Sec. 258. [47 U.S.C. 258] Illegal Changes in Subscriber Carrier Selections.

COMPETITION
Sec. 224. [47 U.S.C. 224] Regulation of Pole Attachments.
Sec. 253. [47 U.S.C. 253] Removal of Barriers to Entry.
Sec. 251. [47 U.S.C. 251] Interconnection
Sec. 256. [47 U.S.C. 256] Coordination for Interconnectivity.
Sec. 257. [47 U.S.C. 257] Market Entry Barriers Proceeding.

Do you agree or disagree that these sections of Title II common carrier regulation are needed? If you agree, please explain why.

CTIA does not support the reclassification of broadband services as telecommunications services subject to Title II, or the application of Title II to the broadband industry.

Senator Ron Johnson
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Question 1 -- According to your testimony, since 2010, wireless carriers have invested over $121 billion in capital expenditures, not including the cost of spectrum. If Chairman Wheeler and the FCC subject the wireless industry to rules that were designed for a monopoly telephone system and public utilities, I am concerned that it will chill this investment and impede future innovations. How can we ensure that any legislation we might enact to preserve an open internet doesn't have a negative effect on capital investment?

We share your concern. The U.S. wireless industry has a significant impact on our nation's economy under the current regulatory framework. In the last ten years, the wireless industry has invested over $260 billion. In 2013, U.S. carriers invested a one year record high of more than $33 billion. This was four times as much in network infrastructure per subscriber than the rest of the world in 2013. In addition, U.S. carriers have paid $53 billion for spectrum and just bid over $40 billion in the AWS-3 auction over the last two months. In addition to these staggering figures, there are significant downstream effects through jobs, GDP and productivity. The wireless industry directly or indirectly supports 3.8 million jobs, or 2.6% of all U.S. employment. The wireless industry pays wages that are 65% higher than the national average and contributes $195.5 billion to the U.S. GDP. Our industry is now larger than the publishing, agriculture, hotels and lodging, air transportation, motion picture and recording, and motor vehicle manufacturing industry segments.

CTIA believes an attempt to reclassify wireless broadband under Title II would be based upon dubious legal authority and would likely lead to years of litigation and uncertainty. The application of Title II, in any form, to wireless broadband would harm consumers and our economy, chill investment and impede future innovations. Clear Congressional legislation, in contrast, would provide legally sustainable requirements that protect Internet openness and recognize the unique technical and operational challenges that mobile networks face.

Question 2 -- According to statistics, 92% of consumers have access to three or more mobile broadband providers, and 82% are served by four or more. In this highly competitive marketplace, isn't Internet openness essential for a mobile provider to win and retain customers?

Yes. The wireless industry is fiercely competitive. They compete on price, speeds, service plans and offerings, quality of service or network management, and more. The result is a thriving, competitive mobile marketplace, with more choices, innovative options, and tremendous value. Internet openness is essential to attract and retain

customers in today's wireless market. Not surprisingly, there has not been a single formal complaint filed since the adoption of the FCC's 2010 Open Internet rules.

Senator Marco Rubio
Written Questions for the Record to
The Honorable Meredith Attwell Baker
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Question 1 -- The use of wireless broadband and Internet connected devices has provided a firestorm of economic growth and innovation that was previously unimagined, and wireless traffic is projected to grow exponentially in the years ahead. Because of this, last year I unveiled a wireless innovation agenda and introduced legislation to free up additional spectrum for commercial use, both licensed and unlicensed. I strongly believe that Congress should enact policies that ensure that the U.S. continues to lead the world in wireless innovation and technology.

Ms. Baker, can you tell me how this legislative effort, to preserve an open Internet, would affect the wireless industry's ability to grow our economy and provide innovative wireless technology to consumers versus the effect of the efforts being led by the FCC and the President to reclassify broadband service under Title II?

> We appreciate and fully support your wireless innovation agenda. The wireless industry currently faces significant regulatory uncertainty and the risk of future litigation and further uncertainty is very high. If the FCC chose to reclassify mobile broadband from Title I to the arcane Title II utility rules, it would treat our world-leading mobile broadband networks the same as our roads, our electrical grids, and our water supply. The mobile industry changed more in the last six months than those industries in the last 60 years, and none of these industries have anywhere near the innovation or competition that is in the U.S. wireless industry. Legislation is the best path forward to preserve an open Internet and provide the certainty necessary for mobile broadband providers to continue investing billions, creating jobs, and bringing innovative products to consumers.

Question 2 -- It seems competition on the basis of network strength, made possible by efficient network management and investment, is a key differentiator in the US market, with carriers constantly offering new and innovative data plans and technologies to attract consumers.

Are you concerned that an unintended consequence of new rules out of the FCC could prevent carriers from being able to differentiate themselves and make the wireless industry less competitive, ultimately harming the very consumers that rules are supposed to protect?

> Yes. As I highlighted in my testimony, wireless is different. Mobile broadband providers face many unique technical challenges and as your question indicates carriers compete based on their network strength, among other things. These challenges include limited spectrum resources, varying numbers of users at any one time, differing handsets with differing capabilities, differing spectrum bands and differing technology platforms, and each user's constantly changing channel conditions, to name a few. These challenges demand far more complex network management than fixed broadband requires and

mobile providers must retain flexibility to develop innovative services plans and offerings in order to attract consumers. If these differences are not recognized, it actually puts wireless at a competitive disadvantage, not only with each other but with fixed broadband services. There is more bandwidth in a single strand of fiber than in all of the spectrum allocated for commercial mobile services and mobile broadband providers cannot simply "build their way out" of capacity constraints. The significant amount of competition for mobile broadband services leads today to over 700 different service plans and competitive options. We agree that the risk of a "one-size-fits-all" mobile Internet under Title II would harm consumers that benefit from significant competitive differentiation and innovation today. To see the impact of monopoly-style regulation on wireless, we can look to Europe, which is far behind 4G LTE deployment compared the U.S. Under a more heavy-handed regulatory regime, EU capital investment has unsurprisingly tracked far lower compared to U.S. investment levels, with U.S. wireless capex running 73% higher than that in five EU countries with similar population from 2011-14. The positive results of that U.S. investment: mobile networks with speeds 30 percent faster than Europe, while serving three times more LTE subscribers.

Question 3 -- We have heard industry suggest that should the FCC follow through with a ruling on Net Neutrality it would create a significant burden for making continued investment in your networks. Yet, critics of that claim point to the recent AWS-3 auction, which surpassed $40 billion, as an indication that the wireless industry is well suited to continue making investments in infrastructure.

Can you respond to those critics?

In the last ten years, the wireless industry has invested over $260 billion in next generation networks. That degree of investment will be put at risk if the FCC reclassifies mobile broadband under Title II. While a number of factors affect investment decisions, the AWS-3 auction result demonstrates a few basic facts: six years is too long to wait between spectrum auctions and mobile broadband providers need more spectrum and fast. Furthermore, the AWS-3 auction demonstrates what happens when the FCC makes available spectrum on an exclusive and substantially cleared basis. Investment flows to such lightly-regulated environments, and consumers are the ultimate beneficiary. Further, if the Commission proceeds down the Title II path, the wireless industry would look to the Court of Appeals and Congress for a remedy, and given the clarity of Section 332, and years of FCC and judicial precedent, we have every confidence we would prevail in such an effort and the ultimate regulatory framework will encourage future innovation and investment.

Question 4 -- It has become clear that the United States is seen around the world as a leader in wireless.

When other countries' regulators are looking to the U.S. to try and emulate our success, what is the most important thing we should or shouldn't do in order to maintain our position of global leadership in wireless?

As you correctly observe, when the U.S. is leading, the wrong thing to do is radically change the regulatory regime for wireless services. The U.S. leads the world in wireless investment and cutting-edge LTE networks and subscribers because of the light regulatory touch that has been applied to the wireless industry by Congress and the FCC. To maintain the U.S. position as the global leader in wireless innovation and deployment, the United States should continue to apply a mobile-specific regulatory touch to wireless services and providers. The reclassification of mobile broadband services as telecommunications services and the application of Title II to wireless broadband services would risk our abdication of leadership and enable other countries to surpass the U.S. in wireless investment and innovation. We urge the government to focus on allocating more spectrum for commercial use and modernizing the Communications Act.

Question 5 -- Can you briefly describe the litigation vulnerabilities that would come from Title II reclassification?

The litigation risks are significant and would result in substantial regulatory uncertainty for multiple years, which would ultimately harm U.S. consumers. The greatest vulnerability from Title II reclassification emanates from the fact that Congress under Section 332 prohibits the FCC from imposing common carrier obligations on mobile broadband services because such services are neither commercial mobile radio services nor the functional equivalent thereof. In addition, mobile broadband services, just like all broadband services, are integrated information services that do include a separate telecommunications service component. The FCC properly classified mobile broadband services as information services in 2007, and any attempt to reclassify mobile broadband services as telecommunications services would have to survive the heightened scrutiny required by the Supreme Court in *FCC v. Fox Television Stations, Inc.* 556 U.S. 502 (2009) because reclassification would have to rest upon factual findings that contradict those reached in 2007, and the information service classification decision in 2007 engendered reliance interests, namely that the wireless industry has invested tens of billions of dollars in reliance on the FCC's 2007 decision.