

U.S. Senate Committee on Commerce, Science, and Transportation
Nominations Hearing of Ms. Gigi Sohn
December 1, 2021
Questions for the Record – Minority

Ranking Member Roger Wicker

Question 1: *The Senate Commerce questionnaire you completed asked you in Part A.11. to “List all positions held as an officer, director, trustee....” In its 2019 IRS Form 990, the Sports Fan Coalition lists you as serving as Secretary and an Officer. Why did you not disclose these positions on your Senate Commerce questionnaire, in addition to your disclosure of board membership?*

Response: I was not a member of the board of Sports Fans Coalition NY, Inc. (SFCNY) in 2019. I joined the board of SFCNY in March 2020 and have never been Secretary or an Officer. The Chair of SFCNY has informed me that this was a clerical error and that the organization will be filing an amended 2019 IRS Form 990 shortly. That 2019 Form 990 will properly list Habiba Alcindor as Secretary and an Officer and Phillip Berenbroick as a Board Member of SFCNY.

Question 2: *In March 2020, you issued a statement that said “I’m honored to join the Locast board.” In your Committee questionnaire in Part A.11., you were asked to identify all positions that you held as an officer. You did not list any board membership for Locast. Please explain this discrepancy or omission.*

Response: Locast was a streaming service run by SFCNY, it is not a separate corporate entity. I listed my board membership in SFCNY in Part A.11 of the Committee questionnaire.

Question 3: *Where did the money come from for the payment of the \$32 million settlement in connection with the Locast case?*

Response: The settlement funds come from amounts collected to fund SFCNY operations after SFCNY pays its vendors.

Question 4: *Can you detail the discussions you have had—including with government officials and private sector entities—regarding potential recusals or conflicts of interest in connection with broadcasters or the broadcast industry? Have determinations been reached regarding the scope and nature of a recusal? If yes, please share that determination.*

Response: On October 26, 2021, I signed an ethics agreement with the FCC’s Designated Agency Ethics Officer. In this agreement, I committed that I would not participate “personally and substantially....in any particular matter” involving SFCNY “unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).” In addition, I have spoken with stakeholders in Congress, the Executive Branch, and external stakeholders about the recusals required by law and regulation regarding with my Board membership of SFCNY.

Question 5: *Have you ever expressed to anyone opposition to Jessica Rosenworcel being nominated or confirmed to serve another term as an FCC commissioner?*

Response: No.

Question 6: *Has the White House expressly stated that you will not be designated as Chair of the Commission?*

Response: President Biden has designated Jessica Rosenworcel Chair of the Commission, and no one has discussed with me whether or not I would be designated as Chair.

Question 7: *Did you have any discussions with the White House or anyone else regarding the possibility of your serving as chair of the FCC?*

Response: I expressed an interest to the White House in serving as chair last March but have had no additional discussions regarding that possibility since that time. I have discussed it with others outside the White House.

Question 8: *During the last Administration, some Senators asked then-FCC Chairman Pai to commit to disclosing contacts with the White House. Do you commit to disclosing to me and my colleagues all contacts and communications you or your staff receive from the White House?*

Response: I commit to following the past practice of Commissioners regarding these contacts.

Question 9: *On net neutrality, during your confirmation hearing, I asked you to identify harms that flowed from the FCC's 2017 decision to repeal the Obama-era Title II regulations. You responded by claiming that a broadband provider throttled a Santa Clara fire department in 2018.*

- 1. Is it your view that the broadband provider's conduct would have violated the 2015 Open Internet Order's bright line rule on throttling?*
- 2. Or, did the particular plan that Santa Clara purchased offer service at one speed for a particular amount of data and then additional data at a different speed in a manner allowed by the FCC's 2015 "no throttling" rule?*
- 3. Did the 2015 Open Internet Order apply, by its terms, to the type of government or enterprise offering purchased in the example you cited?*

Response: The repeal of the 2015 Open Internet Order, including the FCC's relinquishment of its oversight over broadband impacted the Santa Clara County Fire Department because the Fire Department had no recourse when its broadband was throttled. Indeed, it was a seven-month dispute over a data plan that impacted the Fire Department's ability to communicate with other public safety entities and the public. But the Fire Department had no government entity that it could turn to for a resolution of the dispute. Neither the FCC nor the FTC publicly offered its help to resolve the matter after it became national news. The FCC's lack of oversight of broadband was more the cause for this situation than the lack of bright line net neutrality rules.

Based on the public accounts, the plan used by the Santa Clara firefighters was one of several standard plans offered by Verizon to a wide range of customers. If true, even though Santa Clara is a public safety/government user rather than a residential user, the plan could still be a “consumer” offering. It would be a very unfortunate result if firefighters and other first responders received *less* protection than typical consumers.

Question 10: *How should the FCC, the FAA, and the wireless and aviation industries address interference concerns related to 5G deployments using C-Band spectrum?*

Response: All parties agree that public safety is a priority for the FAA and FCC, not to mention stakeholders in the aviation and wireless industry. Recognizing the very significant ramifications of a delay in C-band deployment, I am hopeful that the FCC, FAA, and the wireless and aviation industries can come together to analyze and solve this problem expeditiously, in good faith, in a manner that ensures safety and deployment can coexist. Going forward, I agree with Chairwoman Rosenworcel that the best way to prevent this kind of situation in the future is to ensure that the FCC and its federal counterparts work together in a transparent and collaborative manner. If confirmed, I look forward to working with the Chairwoman and the other commissioners to assist in this process.

Question 11: *Do you agree with the FCC’s 2020 decision to approve Ligado’s application to offer terrestrial low-power services? Do you agree with the FCC’s 2021 decision to deny a stay of that decision?*

Response: Because I am not currently serving at the FCC, I have not yet had access to classified information subsequently shared with the FCC following the FCC’s decision. Additionally, because the matter remains pending before the Commission, and I may be required to vote on the issue, I am unable to express an opinion pre-judging the matter. I note that Congress chose to impose additional safeguards against possible interference, including delay until completion of further study, as part of the National Defense Authorization Act of 2020 rather than voting to overrule the FCC in its entirety. If confirmed, I would seek access to classified information related to this matter and would be guided by Congress and the Communications Act to ensure that critical defense systems do not suffer harmful interference.

Question 12: *Journalistic endeavors aside, what value do you believe local broadcasters bring to their media markets?*

Response: As I stated at the hearing, local broadcasters are vital to the lifeblood of every community. Of the various communications platforms, broadcasters alone are responsible for providing local emergency alerts, local news, and local information to their communities of license. I also committed to work with Congress on policies to support local broadcasters. At the same time, I believe that there should be a diversity of ownership and diversity of viewpoint in the broadcasting industry. If confirmed, I look forward to working with this Committee and the other Commissioners 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.

Question 13: *Would you agree that U.S. copyright laws need to be updated? If yes, how would you suggest Congress do so?*

Response: I do have some background in copyright through my prior experience as Co-founder and Chief Executive Officer of the public interest organization Public Knowledge, which, among other things, promoted 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. However, I have not focused on these types of copyright issues in recent years so I do not have any specific opinions related to updating U.S. copyright laws. Further, such copyright issues are not within the jurisdiction of the Commission, so I would not expect that I would be involved in any legislative initiatives should I be confirmed.

Question 14: *Last July, President Biden signed an Executive Order on “Promoting Competition in the American Economy” that, in part, encouraged the FCC to consider a number of policy actions, including reinstating net neutrality rules on broadband access to residential and office buildings. Since the EO’s publication, the FCC issued a Notice of Inquiry on the latter topic, raising a potential concern that the FCC is taking direction from the White House on telecommunications policy.*

- 1. Do you support any of the recommendations focused on the FCC contained in the Executive Order? If yes, which recommendations.*
- 2. To what extent have you, in either a professional or personal capacity, engaged with White House staff or Biden transition team staff in developing or reviewing policy for any version the aforementioned Executive Order on competition?*
- 3. Courts have generally held that agencies are given deference in court because they are “expert” agencies. If you were involved in writing or otherwise contributing to the policy of the Executive Order that predetermined the outcome of a rulemaking, do you think your agency would deserve deference?*

Response: I have supported the recommendations of the Executive Order focused on the FCC in the past both as a public interest advocate and as a staffer to former FCC Chairman Tom Wheeler. I have not engaged with the White House staff or the Biden transition team in either developing or reviewing policy, writing, or otherwise contributing policy for any version of the Executive Order on Competition. I cannot comment on hypotheticals. The issue of deference is largely determined by the courts based on whether the expert agency involved was or was not arbitrary and capricious when making its determination.

Question 15: *President Biden has called for the reinstatement of “net neutrality” and Title II reclassification of broadband in his July Executive Order on competition, and you have stated that the FCC has authority to reclassify broadband under Title II.*

- 1. If the FCC adopts net neutrality regulations that classify broadband under Title II, do you support the FCC pursuing a broadband consumer privacy rule similar to the rule adopted by the FCC in 2016 if Congress has not acted on a comprehensive privacy bill?*
- 2. Should there be different privacy rules for internet service providers and edge providers?*

3. *Looking at the current state of the broadband market, can you identify which provisions of Title II the FCC should apply to broadband beyond those included in the 2015 Open Internet Order, if any?*
4. *If the FCC pursues a net neutrality rulemaking, do you believe that the rulemaking would or should preempt state net neutrality laws such as California’s Internet Consumer Protection and Net Neutrality Act?*

Response: In 2017, Congress repealed the FCC’s 2016 broadband consumer privacy rules under the Congressional Review Act, which prohibits the agency from adopting “substantially similar” rules in the future. Under the law, the FCC could not pursue a broadband consumer privacy rule that is substantially similar to the one repealed in 2017.

While I was working for Chairman Tom Wheeler at the FCC from 2013-2016, the FCC adopted privacy rules for internet service providers. It could not apply those rules to edge providers because the FCC lacks jurisdiction over those providers. Chairman Wheeler made it clear however, that he viewed the FCC’s privacy rules as a template for rules that could also be applied by Congress to edge providers.

Should the FCC move forward to adopt net neutrality rules and reclassify broadband Internet access providers as a Title II telecommunications service, it would have to start a new proceeding that will look at changes in, among other things, technology, how consumers use the Internet, and business practices. If confirmed, I would look at the totality of the record and the law and come to a conclusion about which provisions should apply, and whether preemption is warranted and the scope of that preemption, with input from staff, my fellow commissioners and members of this Committee.

Question 16: *In 2017, you stated that “[a]ny weakening of the [FCC’s privacy] rules by either the Trump FCC or Congress will leave consumers unprotected from ISP data collection, use and security practices that might violate their privacy.” Please list the privacy violations by ISPs that have occurred since you made that statement.*

Response: The Federal Trade Commission recently published a study of six major ISPs—AT&T, Verizon, Charter, Comcast, T-Mobile, and Google—that examined the industry’s privacy practices since 2017.¹ Among other things, the study found that ISPs have regularly violated user privacy by:

- Disclosing real-time location data to third parties, including bounty hunters;
- Collecting data unnecessary for the provision of internet service to target ads;
- Collecting data on sensitive characteristics such as political affiliation, sexual orientation, and religious beliefs; and

¹ See Federal Trade Commission, Staff Report, A Look At What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers (October 21, 2021) (https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf).

- Using confusing interfaces, sometimes called “dark patterns,” to mislead consumers into inadvertently sharing more data.

Importantly, ISPs often retain this data for years, even after customers have terminated their relationship with the ISP.

Question 17: *As you stated in 2017, the Congressional Resolution of Disapproval that vitiated the 2016 FCC ISP Privacy Rules “ensure[d] that the FCC cannot adopt ‘substantially similar’ rules.” If the FCC reclassifies broadband services as telecommunications services, what rules do you believe the FCC could impose on ISPs given that any such rules could not be “substantially similar” to the rules adopted in 2016?*

Response: Any proposal to reinstate ISP privacy rules—assuming reclassification of broadband services—would have to be conducted under notice and comment pursuant to the Administrative Procedure Act. The proceeding presumably would include seeking comment on what is or is not “substantially similar” to the 2016 ISP privacy rules. As such, any final rules would need to reflect the record developed, as well as comply with the Congressional directive from the Resolution of Disapproval.

Question 18: *On net neutrality, you have said that you are not advocating for the FCC to reinstate the Obama-era Title II regulations; rather, you have said that the FCC should go beyond that. In particular, you have said “I’m not advocating for just reinstating the old rules.” In light of this statement, please respond to the following with a yes or no:*

1. *Do you commit to not applying price controls or rate regulations to broadband providers—either through rate setting or through determining the lawfulness or reasonableness of rates charged?*
2. *Do you commit to not regulating rates by prohibiting free data or zero-rating plans, which allow consumers free access to popular services?*
3. *Do you commit to not regulating interconnection agreements?*
4. *Do you commit to not applying any form of unbundling obligations on broadband providers?*

Response: Should the Chairwoman move forward with a proceeding to adopt net neutrality rules and reclassify broadband Internet access providers as a Title II telecommunications service, the Commission would have to start a new proceeding that will look at changes in, among other things, technology, how consumers use the Internet, and business practices. If confirmed, I would look at the totality of the record and the law and come to a conclusion with input from staff, my fellow commissioners and members of this Committee about the proper scope of net neutrality rules and forbearance from Title II obligations.

As I said unequivocally in my confirmation hearing, I agree with the Chairwoman that the FCC should not set rates for broadband services.

Question 19: *Should the FCC have authority to determine the reasonableness of broadband rates, and if so, how would it make such determinations?*

Response: As I stated in my testimony and at the hearing, I do not believe the FCC should regulate the rate of broadband service. In 2015, the FCC chose to forbear from rate regulation as part of its Title II proceeding and I support that decision. The FCC is, however, charged by Congress under the universal service statute with ensuring that rates charged in rural areas are reasonably comparable to those charged in urban areas. The FCC has rules to gather information on such rates and to reduce the USF support of providers participating in the universal service program that fail to offer consumers in rural areas broadband service at or below the relevant comparability benchmark based on the Urban Rate Survey. Protecting rural consumers in this way is important and, if confirmed, I will work with my Commission colleagues to ensure the Commission is living up to this Congressional directive.

Question 20: *In 2017, you stated that “[t]he Federal Trade Commission has no legal authority to oversee ISP practices.” On what legal basis did you make this statement?*

Response: I am unaware of the context in which this statement arose, but I was most likely talking about the FTC’s ability to enforce net neutrality’s bright line principles, *i.e.*, no blocking, no throttling and no paid prioritization. While the FTC under its Section 5 authority does oversee “unfair or deceptive practices,” of ISPs, it has interpreted that authority to apply only to those occasions where the ISP either promises to engage (or not engage) in a certain behavior but does it anyway, or whether it has failed to tell a consumer that it will engage in certain behavior. In other words, if an ISP reserves the right to engage in blocking, throttling and paid prioritization and tells the consumer, the FTC has no authority to regulate that behavior.

Question 21: *In June 2018, you stated that “[t]he end of the 2015 net neutrality rules and the legal authority on which they are based will allow companies like Comcast, AT&T and Verizon to take control of consumers’ Internet experience and favor or disfavor websites, programming services and applications at will.” That was more than three years ago. What evidence do you have that ISPs have engaged in such activities after the FCC, under Chairman Pai, restored the classification of broadband services as information services?*

Response: As I stated at the hearing, my main concern with the 2017 repeal of the net neutrality rules and reclassification of broadband was the abdication of FCC oversight over broadband and that the majority of harms since the repeal involved the loss of oversight more than the bright line rules. I discussed the throttling of Santa Clara Firefighters broadband during the Mendocino Complex fire as just one example of that. However, in 2018, academic research led by Northeastern University and the University of Massachusetts at Amherst reviewed crowdsourced data from the Wehe app and found that for mobile internet service providers in the United States, “we don’t see evidence of internet service providers throttling only when the network is busy; as far as we can tell, it’s 24/7, and everywhere.” Professor David Choffnes, the lead researcher, noted that this throttling created a “slippery slope,” because “[t]oday it’s video, but what is it going to be tomorrow? When internet service providers decide to take control and make decisions on behalf of consumers and/or

content providers, what's going to be the fallout for those decisions? Is it actually in everyone's best interests?"

It's also important to note that there is ongoing litigation over the 2017 repeal, as well as a growing number of states that have passed their own net neutrality laws and regulations. California, Colorado, Maine, Oregon, Vermont and Washington State have passed net neutrality laws and Hawaii, Montana, New Jersey, New York, and Rhode Island have put in place net neutrality contracting requirements. As a result, broadband providers have been cautious about their business practices.

Question 22: *In April 2017, you stated that the FCC's decision to restore the agency's previous decision not to regulate broadband services like legacy telephone services "will not only fail to provide effective broadband privacy protections, it will come at the cost of eliminating the FCC's net neutrality rules that prohibit ISPs like Comcast and AT&T from picking winners and losers on the internet." What evidence do you have that ISPs have been picking winners and losers on the internet during the past four years?*

Response: As I stated at the hearing, my main concern with the 2017 repeal of the net neutrality rules and reclassification of broadband was the abdication of FCC oversight over broadband and that the majority of harms since the repeal involved the loss of oversight more than the bright line rules. I discussed the throttling of Santa Clara Firefighters broadband during the Mendocino Complex fire as just one example of that.

However, in 2018, academic research led by Northeastern University and the University of Massachusetts at Amherst reviewed crowdsourced data from the Wehe app and found that for mobile internet service providers in the United States, "we don't see evidence of internet service providers throttling only when the network is busy; as far as we can tell, it's 24/7, and everywhere." Professor David Choffnes, the lead researcher, noted that this throttling created a "slippery slope," because "[t]oday it's video, but what is it going to be tomorrow? When internet service providers decide to take control and make decisions on behalf of consumers and/or content providers, what's going to be the fallout for those decisions? Is it actually in everyone's best interests?"

It's also important to note that there is ongoing litigation over the 2017 repeal, as well as a growing number of states that have passed their own net neutrality laws and regulations. California, Colorado, Maine, Oregon, Vermont and Washington State have passed net neutrality laws and Hawaii, Montana, New Jersey, New York, and Rhode Island have put in place net neutrality contracting requirements. As a result, broadband providers have been cautious about their business practices.

Question 23: *The recently-enacted Infrastructure Investment and Jobs Act (IIJA) provides \$65 billion for broadband. The law also directs the Government Accountability Office to examine whether the FCC’s current definition of high speed broadband (25/3 Mbps), is appropriate. Do you believe that the current definition is appropriate? If not, what do you believe should be the appropriate definition? Do you think there are any downsides to adjusting the benchmark speeds upwards?*

Response: I do not think the 2015 federal definition of broadband adequately reflects the modern needs of consumers and businesses. I agree with the IIJA’s statutory text to provide funding to deploy 100/20 Mbps minimum last mile access that can “easily scale,” “meet the evolving connectivity needs of households and businesses,” and “support the deployment of 5G, successor wireless technologies, and other advanced services.” I believe a bipartisan majority of Congress correctly understood that our modern needs of broadband will continue to grow and the FCC should keep pace with the congressional directive.

I do not believe there are downsides to adjusting the benchmark so long as it is tethered to modern uses in healthcare, education, business, farming, and current personal home uses. Given the direction Congress has given with the IIJA, I believe it is important for the FCC to follow that direction in updating its data collection and reporting efforts in order to assess which communities have access to infrastructure Congress intended for them to obtain.

Question 24: *IIJA will provide tens of billions in funding to expand broadband deployment. In an interview with the Wall Street Journal about the law, you noted that the IIJA “can be supplemented with action from the FCC and other agencies.” What other actions do you believe the FCC should take to supplement the broadband provisions in the IIJA?*

Response: Section 60104 of the IIJA requires the FCC to “commence a proceeding to evaluate the implications of this Act and the amendments made by this Act on how the Commission should achieve the universal service goals for broadband” and requires the Commission “to submit to Congress a report on the options of the Commission for improving its effectiveness in achieving the universal service goals for broadband in light of this Act and the amendments made by this Act, and other legislation that addresses those goals.”

The FCC’s Universal Service Fund supports, among other things, connectivity to schools and libraries and rural health care facilities as well as phone and broadband service to low-income families and support for broadband deployment in high-cost areas. After conducting the proceeding required by the IIJA, the FCC may determine that continued USF support in some or all of those areas may continue to be necessary to “achieve the universal service goals for broadband.”

Question 25: *During your confirmation hearing, you noted that a key aspect of closing the digital divide is affordability. With the enactment of the IIJA, which establishes the Affordable Connectivity Program, should the FCC consider any other policies to address broadband affordability? If yes, what policies should the FCC consider?*

Response: If confirmed, I would want to look at the conclusions and the recommended options the FCC makes under Section 60104 of the IIJA for “improving the effectiveness in achieving

universal service goals for broadband in light of this Act, and other legislation that addresses those goals. One option the FCC might consider is how it can make its Lifeline program more accessible and useful to low-income Americans. Since 2017, the number of Lifeline recipients has decreased by 40 percent and the program’s budget has shrunk accordingly. Currently, less than 20% of Americans who are eligible for Lifeline take advantage of it. That is in part because the FCC has erected barriers to eligibility and use of the program and in part because it has not worked with states to complete the National Eligibility Verifier, which can make swift and accurate determinations of Lifeline eligibility. If confirmed, I would like to work with the states to ensure that they connect their state government assistance databases to the Verifier and with the Chairwoman to figure out other ways to strengthen the Lifeline program.

Question 26: *During your confirmation hearing, you suggested that closing the homework gap could be addressed through expanding the E-Rate program to allow funds to be used in the home. Under what legal authority does the FCC have to expand the E-Rate program to the home and how should this be paid for?*

Response: 47 U.S.C. Sec. 254(h)(2)(A) states that the Commission shall establish “competitively neutral rules” to enhance...access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms,....” Chairwoman Rosenworcel and Commissioner Starks have urged that, especially since the beginning of the COVID-19 pandemic, the “classroom” is not just in the school building, but also in the home. I agree with this assessment and believe that the FCC has the authority to interpret Section 254 in this manner.

Some of these home connections have been paid for through the Emergency Connectivity Fund, which was passed as part of the American Rescue Plan, but the annual E-Rate budget could also be used to pay for these home connections. For example, because of the reforms launched in the 2014 and 2015 E-Rate modernization dockets, according to some estimates,² the E-Rate budget had a nearly \$2 billion unallocated in March 2020. Some of that money could have been used to provide home connections during the heart of the pandemic.

Question 27: *Please provide a copy of the recent Locast settlement to the Committee.*

Response: I respectfully refer the Committee to the broadcast networks and SFCNY directly to obtain a copy of the settlement agreement.

Question 28: *If confirmed, how do you plan on approaching broadcast networks that sued Locast if issues, orders, or proceedings that impact them come before the Commission?*

Response: If confirmed, I will approach issues, orders and proceedings involving the broadcast networks as I would any proceeding—with an open mind. As required by the Administrative Procedure Act, if confirmed, my decision in any particular proceeding will be dictated by the totality of the record in a proceeding and the law, along with input from staff, my fellow

² Amir Nasr, the Homework Chasm, Slate (March 30, 2020, found at <https://slate.com/technology/2020/03/coronavirus-school-broadband-homework-gap.html>)

commissioners, and the Members of this Committee. If confirmed, I also plan on meeting with local broadcasters to discuss how the FCC can help them be more competitive, resilient and diverse.

Senator John Thune

Question 1: *Last July, President Biden signed an Executive Order on “Promoting Competition in the American Economy” that encouraged the FCC to consider a number of policy actions, including reinstating Title II regulations on the Internet and increasing regulation of broadband access to residential and office buildings. Since, the FCC issued a Notice of Inquiry on the latter issue, raising a potential concern that the FCC is taking direction from the White House on telecommunications policy.*

- 1. Do you support the recommendations directed at the FCC contained in the Executive Order? If yes, which recommendations?*
- 2. To what extent have you, in either a professional or personal capacity, engaged with White House staff or Biden transition team staff in developing or reviewing any version the aforementioned executive order on competition?*

Response: I have supported the recommendations of the Executive Order directed at the FCC in the past both as a public interest advocate and as a staffer to former FCC Chairman Tom Wheeler. I have not engaged with the White House staff or the Biden transition team in either developing or reviewing policy, writing or otherwise contributing policy for any version of the Executive Order on Competition.

Question 2: *The FCC’s Alternative Cost Model (ACAM) program is helping bring broadband to rural Americans who are the hardest to serve. However, the benefits of the ACAM program are constrained by specific terms that deny consumers faster broadband speeds. Do you support the FCC acting on a petition pending before the Commission to adopt modifications to the program to more quickly bring higher speeds to consumers served by the ACAM program?*

Response: As I noted at the hearing, over the past two decades I’ve worked towards the goal of ensuring that every household in the U.S. has robust and affordable broadband Internet access. If confirmed, I look forward to reviewing the record developed regarding the referenced petition to determine whether modifications are needed to the ACAM program.

Question 3: *What do you believe the FCC’s role should be relating to Section 230 and do you support Congressional action to address online transparency concerns like my bipartisan PACT Act?*

Response: I have publicly stated that I don’t believe that the FCC currently has the authority to interpret Section 230. I am very supportive of Congressional action to address online transparency and have spoken favorably of the PACT Act in several public forums.

Question 4: *The Universal Service Fund at the FCC has had a significant impact on states like South Dakota that have large rural areas. Do you believe it is important to provide rural broadband providers, particularly rate of return carriers, regulatory certainty in the USF program?*

Response: Yes. Throughout my 30+ year career, my priority has been to ensure that modern communications networks are available to everyone regardless of who they are or where they live, which is at the heart of the USF program. For the past 15 years, my priority has been ensuring that every household in the U.S. has robust broadband Internet access, and that any government funding for broadband should be spent wisely, effectively, and with transparency and accountability. For example, while at the FCC, I worked on the Commission's successful modernization of the E-Rate, Lifeline, and high-cost programs, which seek to ensure that schools, libraries, and low-income and rural households have broadband Internet access. The Communications Act also requires that the FCC preserve and advance universal service by ensuring that access to advanced services be provided in all regions of the nation, including to low-income consumers and those in rural, insular, and high cost areas.

As I discussed at the hearing, the bipartisan Infrastructure Investment and Jobs Act (IIJA) requires that the FCC submit a report to Congress within nine months on the impact that the \$65 billion of new deployment funding has on the USF and on recommendations for how to proceed. That provision is so important because an assessment of the USF will provide regulatory certainty going forward. Hearing about the infrastructure funding is significant and critical to meet the nation's needs. Through all of these efforts, it is essential for the FCC to obtain input from the public, state and local entities, as well as the broadband providers about ongoing needs to meet our universal service objectives. Moreover, the FCC will need to communicate effectively about any potential changes to current programs as a result of its assessment and complete any required rulemaking processes to implement such changes.

Question 5: *You stated in your testimony that "Markets work best when there is vigorous competition." I agree. However, government subsidized competition, is not vigorous competition. That is why I have opposed government subsidies that allow for overbuilding. If confirmed, will you commit to prioritize future FCC funding towards unserved areas, not creating so-called competition in less rural areas?*

Response: I support the framework in the IIJA that requires States to provide funding first to deploy broadband in unserved areas and only then provide funding to deploy broadband in underserved areas. I think that is a sound model for future FCC funding as well.

Senator Roy Blunt

Question 1: *Ms. Sohn, you were a key architect of the Obama FCC’s net neutrality rules, which Republicans largely opposed. However, I think if you surveyed Republicans on our committee today, what they were opposed to wasn’t so much the bright line rules against blocking and throttling content—which have never been common practices among broadband providers to begin with—but the regulatory uncertainty that the Title II regulatory framework created. In particular, many of us were concerned about the vague “general conduct” standard, which would have given FCC bureaucrats the discretion to prohibit and punish, on an open-ended case-by-case basis, so-called “unreasonable” practices by broadband providers.*

Under the general conduct standard, providers were left to guess whether their popular consumer offerings—such as those that offered unlimited sponsored content streaming—would be deemed impermissible. In conjunction with the equally open-ended authority to regulate providers’ charges and practices under Title II, this amorphous “general conduct” standard sowed tremendous uncertainty among U.S. broadband providers and undermined their ability to innovate and invest in our networks.

At our in-person meeting in November, you stated that your main concern with the previous FCC’s reversal of the Obama FCC’s net neutrality rules wasn’t about blocking throttling, or paid prioritization—but a lack of “oversight” and opportunity for FCC “recourse” when it comes to other conduct that you consider problematic.

That sounded an awful lot to me like a general conduct standard for the Internet.

- 1. Ms. Sohn, are you in favor of bringing back a general conduct standard for broadband providers?*
- 2. If so, do you think that the 2015 net neutrality order took the right approach with its general conduct rule?*
- 3. Or do you think that the latter was too vague and gave too much discretion to the FCC to review providers’ business models?*

Response: Should the Chairwoman move forward with a proceeding to adopt net neutrality rules and reclassify broadband Internet access providers as a Title II telecommunications service, the Commission would have to start a new proceeding that will look at changes in, among other things, technology, how consumers use the Internet, and business practices. If confirmed, I would look at the totality of the record and the law and come to a conclusion with input from staff, my fellow commissioners and members of this Committee about the proper scope of net neutrality rules (including adoption of a general conduct standard or similar standard) and forbearance from Title II obligations.

However, I have been critical of the general conduct standard in the past. In an October 2020 paper, I stated that the general conduct standard was “too vague and complicated” and urged that it be replaced with a simple “unreasonable discrimination” standard similar to that adopted by the FCC in 2011.

Question 2: *Ms. Sohn, I voted for the Infrastructure Investment and Jobs Act in part because of its significant investment to bridge broadband access gaps in unserved areas of our country.*

In drafting this legislation and striking our bipartisan deal, legislators made the following clear: our priority is to bring broadband access to every unserved American, including the approximately one third of rural Missourians who lack access to any broadband whatsoever, regardless of the technology used to do so. It makes no sense to use the funding to upgrade or duplicate networks in areas that already have access to high speeds, particularly if that comes at the expense of bringing broadband to those Americans who have nothing. A technology-neutral policy is not only the fairest and most cost-effective approach; it is also reflects this country's time-tested, bedrock belief that eschewing technological mandates is the best way to promote innovation and investment in our networks.

- 1. Ms. Sohn, do you believe that a technology neutral approach is the best policy when it comes to federal broadband subsidies?*
- 2. Do you agree to heeding Congress' will that—that federal broadband policy should be technology neutral—in executing your duties, such as in the Commission's annual requirement under Section 706 of the 1996 Telecommunications Act to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion”?*

Response: The FCC has long recognized on a bipartisan basis that Americans expect to have access to robust fixed and mobile broadband networks, and the bipartisan IIJA is expected to significantly advance the availability of robust, scalable networks capable of facilitating 5G and other advanced technologies in currently unserved and underserved areas. I agree with the IIJA's framework and priorities, which give states the authority to determine what technologies best fit their residents' needs. It offers the nation an opportunity to finally ensure that every American has access to at least one robust, broadband network. It will be important for the FCC to also coordinate its USF and Affordable Connectivity Program efforts so that low-income consumers can purchase the broadband service of their choice.

Question 3: *Ms. Sohn, in April 2020, you stated on Twitter: “I call ‘overbuilding’ competition, which is important because a lot of rural #broadband networks are inadequate to meet the needs of residents.”*

- 1. In your mind, what threshold of broadband service counts as “adequate”?*
- 2. Do you consider a network inadequate if download and upload speeds are asymmetrical?*
- 3. Do you consider a population with access to 100/20 Mbps but not 100/100 Mbps “underserved”?*
- 4. Do you believe that federal broadband funding should be used to overbuild networks in areas that already have high-speed broadband but where speeds are not symmetrical?*

Response: I support the bipartisan framework of the IIJA, which requires carriers receiving federal funds for deployment to deploy a minimum of 100/20Mbps in unserved areas and which defines “underserved” areas as those where not less than 80% of the “broadband serviceable locations” cannot receive 100/20 Mbps speeds. I also support the IIJA's mandate that states first

fund carriers to deploy broadband in unserved areas before they can fund carriers to deploy broadband in underserved areas.

Question 4: *You mentioned at the hearing that Locast, the entity you sat on the board of that was successfully sued for retransmitting copyrighted content, provided local broadcast signals to consumers who could not get them over the air, such as viewers in “orphan counties.”*

- 1. Can you provide the committee with a list of how many Locast subscribers there were over the time Locast was operating, broken down by each of the 36 television markets in which you operated this service?*
- 2. From that list, can you also break out how many of those subscribers reside in “orphan counties,” again broken out by television market?*

Response: My understanding is that Locast has ceased doing business. I respectfully refer you to the nonprofit organization that ran Locast, Sports Fan Coalition NY, Inc. (SFCNY) regarding any informational requests for data that it may have.

To better understand your role as a member of the board of directors of Locast, please also answer the following questions:

- 1. What was your role as a member of the board?*
- 2. As a Locast board member, did you sign the settlement agreement with the television networks?*
- 3. Why did Locast choose to settle?*
- 4. Who will be paying for the settlement?*
- 5. Will you provide the Committee with the settlement agreement?*
- 6. Will you also provide any other related documents pertaining to the settlement that explain what your role with Locast is or was, and any liabilities or other requirements you or Locast are responsible for as a result of the judgment against Locast?*

Response: Locast was a nonprofit service that provided local broadcast signals to people who couldn't receive them, including many in rural areas of the country. It relied on a copyright exemption (17 U.S.C. Sec. 111(a)(5)) for nonprofits. I believed that was a good thing both for viewers and for local broadcast stations, but the networks disagreed. They sued and the service was shut down.

In my role as a board member of Sports Fans Coalition NY, Inc. (SFCNY), I participated in quarterly board meetings. In those meetings I reviewed financial statements and plans to expand the service. I was also involved in the decision to shut the service down after the District Court ruling that Locast did not qualify for an exemption under 17 USC Sec. 111(a)(5). My understanding is that any damages will be paid from amounts collected to fund SFCNY operations after the organization pays its vendors.

As a board member, I signed the settlement agreement. I respectfully refer the Committee to the broadcast networks and SFCNY directly to obtain a copy of the settlement agreement.

Senator Deb Fischer

Question 1: *Given the significant funding allocated for broadband deployment across several agencies recently, I want to focus on maximizing these critical federal investments. I am concerned about the federal government funding redundant networks in a manner that ends up limiting funds and resources for rural areas that do not have any broadband connection.*

After Congress passed the bipartisan infrastructure bill, Commerce Secretary Gina Raimondo spoke on the transparency and oversight needed for state broadband proposals. She stressed, "We have to make sure that we don't spend this money overbuilding." During the hearing, you stated that you supported Secretary Raimondo's position on overbuilding. Do you still agree with Secretary Raimondo's comments that we "don't spend this money on overbuilding?"

Response: Yes. As I stated at the hearing, I agree with the approach in the infrastructure bill that requires funding to be provided to unserved areas first.

Question 2: *As mentioned during the hearing, you previously indicated that FCC subsidies can be helpful in "forcing companies to compete." You also have tweeted that "Whenever you hear anybody complain about 'overbuilding' of broadband networks, translate that to 'competition'."*

- 1. If confirmed as commissioner, will you ensure that funding available for broadband deployment within your jurisdiction is prioritized to expand networks to unserved areas, first?*
- 2. If confirmed as commissioner, will you ensure that broadband deployment funds are not used to overbuild existing networks? If so, how?*

Response: I support the framework in the IJA that requires States to provide funding first to deploy broadband in unserved areas and only then provide funding in underserved areas. I think that is a sound model for future FCC funding as well and if confirmed, I will urge the FCC to follow that model.

Question 3: *During the hearing, you framed the policy-related statements you previously made on your Twitter account in the context of being an advocate at the time, distancing your personal views from certain comments that you have made publicly.*

- 1. As a public advocate on communications policy, do you advocate for policies in which you believe?*
- 2. Are there any particular statements that you have tweeted as a public advocate that you no longer agree with?*

Response: Yes, as a public advocate on communications policy I advocate for policies which I believe will benefit consumers. I have tweeted thousands of times since 2009 and I am sure that there are statements that I no longer agree with because of changed circumstances or because somebody convinced me otherwise. And as I testified at my hearing, I do regret the sharp tone of some of my tweets.

Question 4: *During the hearing, you said you were not certain whether you had advised former FCC Chairman Tom Wheeler about the Commission’s actions on municipal broadband in February 2015, which sought to undermine state laws. However, in an interview on a South by Southwest panel that followed in March 2015, you disclosed that the controversial Municipal Broadband Order was pushed through because people were distracted by net neutrality. You said, “It was on purpose...you’re going to do two controversial things, try to bury one, right?”*

- 1. If confirmed as commissioner, will you commit to conducting your work in a transparent and ethical manner?*
- 2. At this time, do you recall whether you advised former FCC Chairman Wheeler on the Municipal Broadband Order, while you were his counselor?*

Response: If confirmed, I will commit to conducting my work in a transparent and ethical matter. Although my choice of words at the 2015 panel was poor, the FCC in fact did not “bury” the Municipal Broadband Order. It was circulated to the other commissioners and placed on the Commission’s agenda just like any other order, including the net neutrality order. There was no effort to hide the ball.

I still don’t recall specifically advising the Chairman on the Municipal Broadband Order. He had a large team working on the Order and my focus at the time was more on the Open Internet Order, which as you noted, was adopted at the same time. But I certainly supported the Order and have supported the ability of communities to choose whether or not to build their own broadband networks.

Senator Jerry Moran

Question 1: *I appreciate that you stated multiple times during the hearing that you are a supporter of local broadcast stations. However, Locast was found by federal judge earlier this year to be illegally retransmitting local broadcast channels without permission or compensation while you served on its board of directors. On behalf of the broadcast industry, four broadcast networks successfully sued Locast and either have already or will receive monetary damages for their stolen content.*

- 1. If you are confirmed and a proceeding that involves these four companies comes in front of the Commission, wouldn't a reasonable person believe that you may have a conflict of interest, given this history?*
- 2. Wouldn't the same hold true for the additional broadcasters injured by Locast's conduct, who could still bring a similar suit?*

In addition to monetary damages, I understand the settlement included certain restrictions on Locast representatives, including members of the board of directors, of which you were a member.

- 1. Please detail the restrictions placed on you by the settlement between Locast and the broadcasters.*

Response: Locast was a nonprofit service that provided local broadcast signals to people who couldn't receive them, including many in rural areas of the country. It relied on a copyright exemption (17 U.S.C. Sec. 111(a)(5)) for nonprofits. I believed that was a good thing both for viewers and for local broadcast stations, but the networks disagreed. They sued and the service was shut down.

While the District Court Judge found that the statutory copyright exemption didn't apply, he never ruled on final liability, nor did he determine that any broadcaster was injured. This was a case of first impression. My understanding is that Locast suspended operations days after the judge's ruling and is in the process of selling its assets. There was a settlement agreement entered into by the parties and a final order by the judge, all of which the non-profit complied with in full. The settlement requires Sports Fan Coalition NY, Inc. (SCFNY) directors, including me, not to engage in a similar exercise to test the scope of the not-for-profit exemption.

On October 26, 2021, I signed an ethics agreement with the FCC's Designated Agency Ethics Officer. In this agreement, I committed that I would not participate "personally and substantially...in any particular matter" involving SFCNY "unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)."

If confirmed, I will approach each proceeding involving broadcasters as I would any proceeding—with an open mind. As required by the Administrative Procedure Act, if confirmed, my decisions will be dictated by the totality of the record in a proceeding and the law, along with input from staff, my fellow commissioners, and the Members of this Committee.

Question 2: *I'm interested in your thoughts on rules for terrestrial spectrum licensees that operate in the 12 GHz band. If confirmed, will you commit to evaluating the 12 GHz NPRM record fairly, strenuously reviewing comments and studies from all stakeholders?*

Response: Yes.

Question 3: *What are specific examples of consumer harms that have occurred since the 2017 rollback of the Obama-era net neutrality regulations?*

Response: As Chairwoman Rosenworcel said at her November 17 confirmation hearing, the 2017 net neutrality repeal was broader than the bright line rules—it removed FCC oversight over broadband entirely. Among other things, that left California firefighters without recourse when a broadband company throttled its service during the Mendocino complex fire, which at the time was the biggest in state history, and left consumers without recourse when Frontier charged monthly fees to consumers who bought their own modems. It also resulted in some small wireless providers having to slow or halt fiber deployment because pole owners either charged higher rates or refused to negotiate a rate.

In addition, researchers at Northeastern University and the University of Massachusetts at Amherst reviewed crowdsourced data from the Wehe app and found that for mobile internet service providers in the United States, “we don’t see evidence of internet service providers throttling only when the network is busy; as far as we can tell, it’s 24/7, and everywhere.” David Chofness, the lead researcher, noted that this throttling created a “slippery slope,” because “[t]oday it’s video, but what is it going to be tomorrow? When internet service providers decide to take control and make decisions on behalf of consumers and/or content providers, what’s going to be the fallout for those decisions? Is it actually in everyone’s best interests?”

It’s also important to note that there is ongoing litigation over the 2017 repeal, as well as a growing number of states that have passed their own net neutrality laws and regulations. California, Colorado, Maine, Oregon, Vermont and Washington State have passed net neutrality laws and Hawaii, Montana, New Jersey, New York, and Rhode Island have put in place net neutrality contracting requirements. As a result, broadband providers have been cautious about their business practices.

Question 4: *Last week, I asked Chairwoman Rosenworcel about supply chain challenges facing broadband providers, in light of the increased level of federal spending to close the digital divide. She said that she started a proceeding at the FCC to collect information about how semiconductor shortages are impacting the telecommunications sector. What do you think the FCC should be doing to analyze the issues that exist within the broadband deployment supply chain, including outside of the semiconductor issues?*

Response: Thanks to the work of Congress over the past year, there are ample financial resources available to help close the digital divide in both rural and urban areas. The FCC inquiry into the impact semiconductor shortages are having on the telecommunications sector is a good first step. The Commission should further build a record to identify other potential bottlenecks that could slow or stall the unprecedented broadband deployment efforts that will

occur over the next five to ten years thanks to the RDOF, the IJJA, and other actions by Congress.

As the record develops and the FCC continues to identify issues that exist within the broadband supply chain, we owe it to ourselves, our colleagues at the Department of Commerce, and to the American public to do everything we and our federal government partners can to address these supply chain issues and implement efforts to resolve them before they have the opportunity to cause delay. Moreover, we must all work together to ensure these shortages do not recur and impede future American technological leadership. If confirmed, I would work closely with my colleagues at the FCC and our federal partners to consider all appropriate options so that our efforts to close the digital divide are not hamstrung by workforce or manufacturing shortages.

Senator Dan Sullivan

Question 1: *I'm concerned about what seems to be your clear bias toward addressing broadband deployment problems in urban areas over rural areas. Just last year, in your testimony before the House Energy and Commerce Committee, you said that "policymakers have focused disproportionately on broadband deployment in rural areas of the United States, Americans who live in cities also face enormous challenges to broadband connectivity". While I am sure urban areas have challenges relating to broadband, would you agree that extreme-rural, frontier communities with no broadband infrastructure at all – like many in Alaska – perhaps deserve disproportionate focus from policymakers?*

Response: As I noted at the hearing, over the past two decades I've worked towards the goal of ensuring that every household in the US—both rural and urban—has robust and affordable broadband Internet access. I also recognize that there are communities and states—like Alaska—where deployment is more challenging. I support the broadband provisions in the infrastructure bill because—not only did Congress require that the funding goes to unserved areas first—it also requires that the states receive and distribute the funds. States and localities know best where broadband is needed and will be essential partners for the Commission and NTIA. Additionally, there are other aspects to the digital divide that we also must consider—including affordability and digital literacy.

Question 2: *As a result of the court's decision against Locast, a company which you serve on the board of and which was shut down earlier this year, Locast is required to pay the broadcast companies which brought the lawsuit \$32 million. Are you personally liable for any part of that fine? Who is required to pay those damages to the broadcast companies and have those payments already occurred? Will this be taken into account in your recusal considerations?*

Response: I am not personally liable for any part of the monetary settlement. My understanding is that any settlement funds will be paid from amounts collected to fund operations of Sports Fan Coalition NY, Inc. (SFCNY), the nonprofit entity that ran the Locast service, after the organization pays its vendors. On October 26, 2021, I signed an ethics agreement with the FCC's Designated Agency Ethics Officer. In this agreement, I committed that I would not participate "personally and substantially...in any particular matter" involving SFCNY "unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)."

Question 3: *The FCC has taken significant steps in recent years to identify and make available spectrum for commercial use, including for 5G deployment that is critical to ensure U.S. leadership over China. I understand that the FCC is currently examining the potential of 5G in the 12 Ghz band through extensive engineering reviews. Do you see this as an opportunity to advance US 5G leadership? Will you commit to complete your review in a timely manner if you find that coexistence is possible between satellite and terrestrial users in the band?*

Response: As you note, in January 2021, the FCC adopted an NPRM seeking comment on whether to allow terrestrial flexible use (including mobile services) in the 12 GHz band. I believe that the FCC should encourage the efficient use of limited spectrum resources when coexistence between users is feasible. If confirmed, I look forward to working with FCC staff and you to learn more about the potential for coexistence between satellite and terrestrial users in this band.

Question 4: *We have heard from rural healthcare participants, rural service providers, and others about USAC’s lack of transparency in administering the Rural Healthcare Fund and its delays in processing funding requests in a timely way. Why has the FCC allowed these problems to persist and will you commit to adopting reforms to address these problems?*

Response: I agree that the Rural Healthcare Fund serves a critical role for rural communities—especially in Alaska. If confirmed, I look forward to learning more about these issues and working with your office.

Question 5: *The Communications Act requires that rural health care providers be able to receive access to necessary telecommunications and broadband services at urban rates, and that service providers be compensated for the difference between the rural and urban rates. Many of us are concerned that without appropriately determining rural and urban rates, and in the absence of adequate compensation to service providers, there will be a loss of telehealth services in the most remote and highest-cost areas of the nation. Do you share this concern and what steps should the FCC take to address this concern?*

Response: Congress’ mandate for universal service in Section 254 is clear: “There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” I also recognize how critical robust telehealth services are to Alaskans. I share your concern and I know that rural and remote areas such as Alaska have unique challenges that need to be taken into account. I want to learn more about this issue and how it affects funding levels in some areas of the country—including Alaska. If confirmed, I commit to working with you and my colleagues on the Commission on these issues.

Senator Marsha Blackburn

Question 1: *Earlier this year, the FCC issued a Notice of Proposed Rulemaking to consider rules to allow companies to use the 12 GHz band for 5G deployment. To continue leading the world in innovation, especially given China’s commitment to winning the race to 5G, I believe we need to look for more spectrum to keep the U.S. competitive. Do you have views on the viability of the 12 GHz band for 5G connectivity and, if confirmed, will you commit to moving quickly towards final action in that proceeding?*

Response: As you note, in January 2021, the FCC adopted an NPRM seeking comment on whether to allow terrestrial flexible use (including mobile services) in the 12 GHz band. I believe that the FCC should encourage the efficient use of limited spectrum resources when coexistence between users is feasible. If confirmed, I look forward to working with FCC staff to learn more about the potential for coexistence between satellite and terrestrial users in this band.

Question 2: *As I’m sure you already know, the FAA issued a safety alert on 5G interference to aircraft. While there is no sufficient evidence that 5G deployment causes aircraft safety concerns, the FAA went ahead and stated “action might be required to address potential interference with sensitive aircraft electronics.” What are your thoughts on this ongoing situation?*

Response: It is critical that spectrum coordination between federal agencies is improved to ensure enough spectrum is in the pipeline for licensed and unlicensed uses. Updating the FCC-NTIA MOU on Spectrum Coordination that establishes clearly defined and agreed upon processes for making decisions would be very helpful. Another thing that’s needed is a national spectrum strategy—NTIA and the FCC should work together with industry and the federal agencies with spectrum interests to identify what bands should be targets for commercial use and try to resolve technical problems before major decisions are made.

Senator Todd Young

Question 1: *Ms. Sohn, last year, the FCC opened the 6 GHz Band to Wi-Fi and other unlicensed uses. In that order, the FCC pledged to ensure that licensed incumbent operations in the band are protected from harmful interference. Do you commit to protecting incumbents in this band from harmful interference?*

Response: Yes.

Senator Mike Lee

Question 1: *During the hearing, you said “I know of no proposal” at the Commission to impose a minimum or basic tier broadband plan like those required by the infrastructure bill. While there may not be a pending action at the Commission to consider imposing a basic tier or minimum broadband plan, should the requirement of such plans be proposed by a fellow Commissioner would you support it?*

Response: As I said at the hearing, I am not aware of any such proposal and it is difficult to comment on a hypothetical scenario. If confirmed, I will make any and all policy decisions based upon the law and the record of the proceeding, along with input from staff, my fellow Commissioners, and Members of this Committee.

Question 2: *During the hearing I asked about why you oppose the federal government’s ownership/operation of a broadband network, but support state or local government ownership/operation of broadband networks. You said you needed time to think about it and would answer in the QFRs. What’s the distinction that you draw? And why do you support one and not the other?*

Response: I support municipal broadband networks because they foster competition and choice, two core values that have guided my career. The nationalized 5G network proposed in the last administration would not have catalyzed competition or choice.

The real-world evidence in favor of municipal broadband is compelling. Municipal networks have connected unserved rural communities, driven down incumbent prices, and created jobs. For example, a recent study found that Chattanooga's municipal network generated \$2.69 billion in economic activity and created 9,516 jobs over the past decade.³ I have not seen compelling evidence demonstrating similar benefits from a nationalized 5G network.

Moreover, my advocacy for municipal broadband is rooted in the belief that local governments should have the *option* to invest in their own broadband infrastructure if they so choose. A nationalized 5G network would not empower local governments in this manner.

Question 3: *It’s no secret that you support “Net Neutrality” requirements. And it’s no secret that I oppose them.*

1. *If the FCC were to reimpose a Title II classification of broadband, should the Commission go further and expand beyond the requirements imposed by the 2015 rule?*
2. *How would you go about determining whether the FCC should “forbear” a rule from taking effect? And how would you approach this in the net neutrality context?*

³ See Bento J. Lobo, Ph.D., CFA, Ten Years of Fiber Optic and Smart Grid Infrastructure in Hamilton County, Tennessee (August 31, 2020) (https://assets.epb.com/media/Lobo%20-%20Ten%20Years%20of%20Fiber%20Infrastructure%20in%20Hamilton%20County%20TN_Published.pdf).

3. *You've previously noted that Congress should pass "Net Neutrality" legislation because of the "ping-pong" between Administrations. Should the FCC wait for Congress to work on legislation to settle this issue rather than moving forward with a controversial rule?*

Response: Should the Chairwoman move forward with a proceeding to adopt net neutrality rules and reclassify broadband Internet access providers as a Title II telecommunications service, the Commission would have to start a new proceeding that will look at changes in, among other things, technology, how consumers use the Internet, and business practices. If confirmed, I would look at the totality of the record and the law and come to a conclusion with input from staff, my fellow commissioners and members of this Committee about the proper scope of net neutrality rules and forbearance from Title II obligations.

As I testified at the December 1 hearing, I support Congress passing legislation that settles the matter of FCC authority to oversee the broadband market and net neutrality once and for all. However, as became clear during the COVID-19 pandemic, broadband is an essential service, and it cannot continue without oversight. Therefore, while I would urge swift Congressional action, consumers cannot be left unprotected while Congress deliberates.

Question 4: *In June 2018, after the FCC repealed the 2015 Net Neutrality rule, you provided an interesting quote: "The end of the 2015 net neutrality rules and the legal authority on which they are based will allow companies like Comcast, AT&T and Verizon to take control of consumers' Internet experience and favor or disfavor websites, programming services and applications at will. Equally as important, should consumers or innovators have a complaint about fraudulent, discriminatory, privacy violating or predatory pricing practices of broadband ISPs, the [FCC] won't answer their call. For the first time since the creation of broadband, the agency will not take responsibility for protecting consumers or competition". It's been more than 3 years since you made this statement. Do you have any evidence that your prediction of this ISP behavior actually came true? Please be specific*

Response: As Chairwoman Rosenworcel said at her November 17 confirmation hearing, the 2017 net neutrality repeal was broader than the bright line rules—it removed FCC oversight over broadband entirely. Among other things, that left California firefighters without recourse when a broadband company throttled its service during the Mendocino complex fire, which at the time was the biggest in state history, and left consumers without recourse when Frontier charged monthly fees to consumers who bought their own modems. It also resulted in some small wireless providers having to slow or halt fiber deployment because pole owners either charged higher rates or refused to negotiate a rate.

In addition, researchers at Northeastern University and the University of Massachusetts at Amherst reviewed crowdsourced data from the Wehe app and found that for mobile internet service providers in the United States, "we don't see evidence of internet service providers throttling only when the network is busy; as far as we can tell, it's 24/7, and everywhere." Professor David Choffnes, the lead researcher, noted that this throttling created a "slippery slope," because "[t]oday it's video, but what is it going to be tomorrow? When internet service providers decide to take control and make decisions on behalf of consumers and/or content

providers, what’s going to be the fallout for those decisions? Is it actually in everyone’s best interests?”

It’s also important to note that there is ongoing litigation over the 2017 repeal, as well as a growing number of states that have passed their own net neutrality laws and regulations. California, Colorado, Maine, Oregon, Vermont and Washington State have passed net neutrality laws and Hawaii, Montana, New Jersey, New York, and Rhode Island have put in place net neutrality contracting requirements. As a result, broadband providers have been cautious about their business practices.

Question 5: *During the hearing you cited the Verizon-Santa Clara fire dispute as a reason to reimpose a Title II classification of broadband since, in your view, the situation wouldn’t have happened if the 2015 net neutrality rules were in place.*

- 1. Many have argued that this was a dispute over a data plan. The 2015 net neutrality rules allowed for data plans with speed restrictions so long as the company was transparent about the plan. In your view, if the 2015 net neutrality rules had been in place during this issue, would Verizon have violated the throttling rules?*
- 2. You’ve previously cited the “general conduct rule” in the 2015 net neutrality rules as a means of enforcement in this situation. If a company was in compliance with the throttling rules expressly cited in the 2015 rule, can, in your view, the FCC invoke the “general conduct rule” and use their discretion to go beyond those express rules and enforce discretionary violations?*
- 3. In your view, are there any limits to the FCC’s discretion under the “general conduct rule?” If so, what are they?*

Response: The repeal of the 2015 Open Internet Order, including the FCC’s relinquishment of its oversight over broadband impacted the Santa Clara County Fire Department because the Fire Department had no recourse when its broadband was throttled. Indeed, it was a seven-month dispute over a data plan that impacted the Fire Department’s ability to communicate with other public safety entities and the public. But the Fire Department had no government entity that it could turn to for a resolution of the dispute. Indeed, neither the FCC nor the FTC publicly offered its help to resolve the matter after it became national news. The FCC’s lack of oversight of broadband was more the cause for this situation than the lack of bright line net neutrality rules.

While I did surmise that the general conduct standard might have been a tool to resolve this matter, I have been critical of the general conduct standard in the past. In an October 2020 paper, I stated that the general conduct standard was “too vague and complicated” and urged that it be replaced with a simple “unreasonable discrimination” standard similar to that adopted by the FCC in 2011.

Question 6: *The FCC and Congress have long debated expanding the pool of who has to pay into the Universal Service Fund (USF). Big Tech Companies are one area of industry that has been discussed.*

- 1. I know you've previously discussed making big tech companies pay into the USF, but is it your view that we should expand the pool of USF contributors based upon the amount of data that they use on a network? Should autonomous vehicle companies, precision agriculture companies, telehealth services or other emerging technology companies be required to pay into the USF?*
- 2. And how, in your view, do you draw the limits on who should pay into the USF?*

Response: I agree that the USF contribution mechanism needs reform. But as I stated at the hearing, an important first step is for the Commission to complete the report to Congress required by Section 60104 of the IIA to evaluate how the funds in the infrastructure bill impact the USF. From there, we can then start the debate on how to move forward—whether it is in the Congress or at the Commission—to determine the appropriate solution, but all options should be on the table.

Question 7: *You have previously urged the FCC to look into whether Sinclair, a conservative broadcast group, is “qualified to be a broadcast licensee at all.” You are also cited as calling Fox News, “state-sponsored propaganda, with few if any opposing viewpoints.”*

- 1. If confirmed, how can we trust that you would use the FCC's authority to actually act in an independent, unbiased manner?*
- 2. And, in your view, what specific authority, if any, does the FCC have to address these particular issues that you identified?*

Response: I opposed the Sinclair-Tribune merger not because of Sinclair's conservative views, but because it would have, in my words, “put far too much power over local news and information in the hands of one company.”

It was the FCC under Chair Ajit Pai that effectively blocked the merger because it found that “there was a substantial and material fact as to whether Sinclair affirmatively misrepresented or omitted material facts with the intent to consummate this transaction without fully complying with the media ownership rules.” I supported that decision, and said that, “[i]f true, this allegation raises a legitimate question as to whether Sinclair is fit to be a licensee at all, and not just a licensee of Tribune's stations.” This is consistent with the Administrative Law Judge, appointed by then-Chairman Pai, who said that Sinclair's misrepresentations “may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license.”

My opinions on the Sinclair merger and Fox News were taken as part of my job as a public interest advocate. As such, those opinions will have no bearing on my actions or decisions as a policymaker if I am confirmed. I understand my role will be much different if I am confirmed, and I will approach each proceeding involving Sinclair or Fox News as I would any proceeding—with an open mind. As required by the Administrative Procedure Act, if confirmed,

my decisions will be based on the totality of the record in a proceeding and the law, along with input from staff, my fellow commissioners, and the Members of this Committee. I also understand that the FCC’s jurisdiction does not extend to Fox News and its programming.

I agree that it is extremely important for policymakers to avoid any actual or apparent conflict of interest. On October 26, 2021, I signed an ethics agreement with the FCC’s Designated Agency Ethics Officer. In this agreement, I committed that I would not participate “personally and substantially....in any particular matter” involving SFCNY “unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).”

Question 8: *What are your views on government control/ownership of spectrum? Does the federal government control too much spectrum?*

- 1. What do you think about the current state of spectrum decision-making, particularly the federal agencies use of a “heckler’s veto” to stymie the decisions of the Commission? How would you approach a federal agency “heckler’s veto?”*
- 2. I have a bill called the Government Spectrum Valuation Act, which would require the NTIA (in consultation with the FCC and OMB) to conduct a market valuation of government spectrum allocations. The goal is to assess the “opportunity cost” associated with federal spectrum. Would you support such an effort?*

Response: It is critical that spectrum coordination between federal agencies be improved to ensure enough spectrum is in the pipeline for licensed and unlicensed uses. Updating the FCC-NTIA MOU on Spectrum Coordination that establishes clearly defined and agreed upon processes for making decisions would be very helpful. Another thing that’s needed is a national spectrum strategy—NTIA and the FCC should work together with industry and the federal agencies with spectrum interests to identify what bands should be targets for commercial use and try to resolve technical problems before major decisions are made.

Question 9: *Regarding spectrum coordination, the FCC and the NTIA have operated under an MOU that is the main mechanism for coordination of spectrum management decisions.*

- 1. Is the existing MOU’s framework sufficient for today’s spectrum coordination between the FCC and NTIA?*
- 2. Do you think the MOU needs to be updated? If so, how?*

Response: I believe that the MOU should be updated. In many of my meetings with Senators and staff during the confirmation process, I have talked about the need for better spectrum coordination between agencies and for a national spectrum strategy that identifies what bands should be targets for commercial use and try to resolve technical problems before major decisions are made. I have also recommended the creation of an interagency spectrum engineering task force where engineers from different agencies could work out technical issues and provide that information to the policymakers before final decisions are made.

Question 10: *In your view is the Interdepartment Radio Advisory Committee (IRAC) operating efficiently? In your view, is there room for improvement in the IRAC process? If so, how?*

Response: The IRAC should serve as a critical tool to ensure sound government-wide spectrum management decisions are reached efficiently as NTIA develops spectrum allocation and management policies for federal government spectrum use. It is vital that the IRAC work quickly, collaboratively, and focus on sound radio engineering. Over the years, there have been a number of examples where the IRAC process seems to have fallen short of these goals.

I understand that there is bipartisan consensus in Congress and at the FCC that updating the Memorandum of Understanding (MOU) that guides the spectrum coordination processes between the FCC and NTIA could help improve the government's spectrum decision-making. If confirmed, I would welcome an opportunity to work with your office on efforts to revise the MOU and to improve the workings of the IRAC.

Question 11: *Do you have any concerns about Chinese influence at the International Telecommunication Union (ITU)?*

- 1. Does China's influence at the ITU have implications for setting global standards for telecommunications?*
- 2. As a Commissioner of the FCC, what priorities do you have to prevent Chinese control of the ITU?*

Response: I understand there are concerns about China manipulating the ITU process. I agree with Chairwoman Rosenworcel that the Commission should prioritize its participation in standards making organizations to ensure that they operate as intended. If confirmed, I look forward to learning more about these issues and working with your office on ways to address these concerns.

Question 12: *Our current video marketplace is governed by Title VI of the Communications Act and it dates mostly back to laws passed in 1992. But technology has changed since 1992 and now the wire used to bring video also brings broadband to American households.*

- 1. Should Title VI be modernized to reflect current technologies?*
- 2. Is there a relationship between effective broadband deployment to urban and rural areas with Title VI reform?*

Response: I agree that Title VI of the Communications Act should be reviewed and modernized to better reflect the current video marketplace. However, it is unclear how such reform could impact broadband deployment. If confirmed, I would be interested in learning more and working with you on the issue.

Question 13: *Conducting cost-benefit analyses for proposed regulations has been a practice undertaken by agencies under both Democrat and Republican Administrations.*

- 1. Please explain your views on the use of cost-benefit analysis when considering proposed regulations. Should all FCC regulations be considered with a cost-benefit analysis?*
- 2. If regulatory costs outweigh the benefits, should that be a determining factor that prevents the FCC from moving forward with a proposed regulation?*

Response: Across Democratic and Republican administrations, the FCC has conducted cost-benefit analyses along with public interest analyses as Congress has instructed the Commission to do under the Communications Act. In addition, the Commission’s public comment process allows for stakeholders to engage on these issues and help inform the Commission’s understanding of the impact of its rules. The Commission has rules that direct the Office of Economics and Analytics to perform an analysis where the potential impact of a rulemaking would have “an annual effect on the economy of \$100 million or more.” If confirmed, I intend to balance cost-benefit as well as the public interest to ensure that the Commission fulfills its mission to ensure that all Americans have access to communications services.

Question 14: *Should agencies exercise only power that Congress expressly gives?*

- 1. Absent that “express delegation” should agencies exercise restraint in rulemaking or is allegedly ambiguous language an opportunity for rulemaking?*
- 2. Regulations that are highly prescriptive can create a higher regulatory compliance burden, which hits harder on smaller companies with fewer resources. What is your opinion on the relationship between rules and the ability for market incumbents to use them to insulate themselves from competition?*

Response: While it is usually preferable that Congress be explicit in its statutory direction, there likely will be instances where an agency must rely on its expertise to interpret the intent of Congress. Ultimately, any policy decision will need to be based on the agency’s statutory authority and subject to the appropriate notice and comment.

As I noted in my testimony, I believe that markets work best when there is vigorous competition. Federal policies that promote competition are always superior to heavy-handed behavioral or price regulation, which is why I have always supported policies that lower barriers to entry and minimize gatekeeper power.

Question 15: Section 706 of the Telecommunication Act of 1996 requires the FCC to do an annual notice of inquiry regarding the reasonable and timely deployment of advanced telecommunications capability to all Americans.

1. *What does “advanced telecommunications capability” mean to you?*
2. *What does “a reasonable and timely fashion” mean to you?*
3. *If the FCC determines that there isn’t “advanced telecommunications capability being deployed to all Americans”, the Commission is authorized to take “immediate action to accelerate deployment of such capability.” Are there any limits to the authorities that the FCC can exercise under this section? If so, what are they?*

Response: “Advanced telecommunications capability” takes into account the latest applications and services and assesses whether a telecommunications infrastructure is able to utilize them. Several last mile access connections are adequate to handle the latest generation of applications and services and should be considered “advanced telecommunications capable.” However, capacity constrained legacy infrastructure, such as decades old copper DSL that does not even meet the 2015 federal definition of broadband, should not be considered “advanced telecommunications capable.”

The meaning of “reasonable and timely fashion” should reflect federal and state investment efforts to connect all people as well as take into account ISP deployment decisions primarily in rural areas. For example, the Infrastructure Investment and Jobs Act (IIJA) establishes a timeline of 4 years (subject to extensions) for full deployment of long-term infrastructure with its \$42.45 billion deployment fund. This deployment timeline reflects the average amount of time a new network takes to fully deploy from a motivated provider.

However, the FCC’s authority to exercise power in this section has its limits. For example, the Sixth Circuit made clear that the FCC cannot preempt state laws that restrict the expansion of municipal fiber under its Section 706 authority. So even if an area is found to be both lacking “advanced telecommunications capable” infrastructure and will not receive it in a “reasonable and timely fashion,” the court has found that other authorities such as state power can limit the FCC’s reach.

Senator Ron Johnson

Question 1: *Reports indicate that you want to replace the Restoring Internet Freedom Order with a regulation even stronger than the Open Internet Order.*

1. *What specific regulations do you think need modification and how?*
2. *What effect do you think more regulation would have on broadband investment and deployment, foster innovation, and ultimately close the digital divide?*

Response: Should the Chairwoman move forward with a proceeding to adopt net neutrality rules and reclassify broadband Internet access providers as a Title II telecommunications service, the Commission would have to start a new proceeding that will look at changes in, among other things, technology, how consumers use the Internet, and business practices. If confirmed, I would look at the totality of the record and the law and come to a conclusion with input from staff, my fellow commissioners and members of this Committee about the proper scope of net neutrality rules and forbearance from Title II obligations.

Research studies, SEC filings, earnings reports and the comments of ISP executives themselves demonstrate that the 2015 Open Internet Order had no effect on broadband investment. Investment decisions are based on a wide variety of factors including technological advancement, the economy and the level of competition in a market. Thus, I would expect that whatever the FCC does in a net neutrality proceeding would have no impact on investment.

Question 2: *Do you believe the FCC has the authority to consider the political views of a provider or the content broadcast by a provider when making license and regulatory decisions? If no, do you think it should have such authority? Please explain why or why not.*

Response: No. The FCC's authority is limited by the First Amendment and Section 326 of the Communications Act.

Question 3: *In 1987, the FCC revoked the Fairness Doctrine on the grounds that it violated the First Amendment and restricted democratic debate. Since then, the number of talk radio and broadcast TV programs grew exponentially. However, some on the left advocate for its resurgence. Do you believe the Fairness Doctrine should be restored in part or in whole or be applied even more broadly? Please explain why or why not.*

Response: I do not believe the Fairness Doctrine should be restored or expanded. It makes no sense given the current media landscape.

Question 4: *What do you believe is the best way to ensure the FCC's independence from political influences?*

Response: In the Communications Act of 1934, Congress deemed the Commission an independent agency and incorporated key structural elements into the agency's design to ensure independence from political influences. These structural elements include the size of the Commission, the length of the Commissioner terms, the fact that terms lapse on a staggered

basis, and the requirement that Commissioners must be confirmed by the Senate. Congress also established that no more than a simple majority of the Commission's membership could come from one party, effectively ensuring bipartisanship in the Commission's membership. Thanks to this congressional design, the Commission is less susceptible to outside political influence than it would be in the absence of these safeguards.

I know that you have long been a champion of rooting out undue political influence in independent agencies. If confirmed, I commit to maintaining the independence of the agency.

Senator Shelley Moore Capito

Question 1: *How do we speed up deployment in my state to hit 100 percent served?*

Response: We need a coordinated and cooperative approach among federal, state, and local officials and interests to ensure that every West Virginian has the ability to access a robust, scalable, broadband network and the means to purchase that service, which is so critical to meeting their daily needs. If confirmed, I am committed to working with federal, state, and local partners to meet West Virginia's needs.

Question 2: *What can the FCC do to make sure recipients of Universal Service Fund (USF) support are qualified and are deserving of the funding they receive?*

Response: I think the FCC must take four steps to ensure that recipients of USF support are qualified and deserving of the funding they receive. First, the FCC must conduct serious due diligence to ensure that possible recipients have the technical, operational, and financial expertise to build the promised networks. Second, the FCC must conduct oversight to ensure that the promised networks are being built. This includes not only requiring progress reports from the recipients, but actually visiting the sites where networks are being built. Third, the FCC must hold those who do not build promised networks accountable. This accountability must include more than fines—it must include requiring a defaulting entity to remit the USF funds and prohibiting that entity from participating in the next round of funding. Fourth, the FCC must coordinate with NTIA, USDA, and other agencies that fund broadband to ensure that the programs are complementary and consistent with the law, and that they direct funding to appropriate areas without unnecessary duplication.

Question 3: *Big tech makes a lot of money off advertising over broadband networks. What are your thoughts on requiring them to help pay for the deployment of high-speed broadband?*

Response: I agree that the USF contribution mechanism needs reform. But as I stated at the hearing, an important first step is for the Commission to complete the report to Congress required by Section 60104 of the IIA to evaluate how the funds in the infrastructure bill impacts the USF. From there, we can then start the debate on how to move forward—whether it is in the Congress or at the Commission—to determine the appropriate solution, but all options should be on the table. Some of those options, including requiring Big Tech to pay into the universal service fund, would necessitate Congressional action to give the FCC the authority to require them to pay.

Question 4: *What are your thoughts on the progress of updating the FCC broadband maps? Once completed, how do we keep them up to date?*

Response: 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 should I be confirmed.

Question 5: *Unlicensed and shared spectrum is crucial to advancing innovation and entrepreneurship. What's next from your perspective in supporting innovation in unlicensed and shared bands?*

Response: The United States has remained the world leader in unlicensed and shared spectrum innovation and must continue to do so going forward. In the short term, there are several rulemakings already in progress at the Commission that could expand available unlicensed and shared spectrum for WiFi 6 and WiFi 6e and could enhance the ability of rural wireless ISPs and Native American Tribes to provide broadband in their communities.

Longer term, I fully support Chairwoman Rosenworcel's repeated calls for the FCC and Congress to develop a "pipeline" for unlicensed and shared spectrum that will meet the ever-increasing demand for expanded WiFi, rural broadband, and IoT spectrum. If confirmed, I look forward to working on these issues, recognizing that it is also important to protect existing licensed users from interference, and to ensure adequate exclusive licensed spectrum for 5G and future 6G expansions.

Question 6: *Many communities in my state, have had to forego other federal funding opportunities that would allow for more rapid broadband deployment to unserved areas because certain census blocks were included in an RDOF bid. What are potential federal remediation efforts for rural areas in my state that were included in an RDOF census block but are also eligible for other types of federal support?*

Response: The decision by the FCC under the former Chairman to restrict access to other funding streams for participants in the RDOF program has perplexed me. The goal is to get people connected to this essential service and to do so quickly. If confirmed, I look forward to working with my colleagues on this and related issues.

Question 7: *In late June, the FCC, NTIA, and USDA all entered into an interagency agreement to coordinate broadband funding deployment. In your experience – can you speak to the effectiveness of these interagency agreements? Do you have thoughts on how to beef up coordination between agencies to ensure the efficient use of taxpayer money to deploy broadband in West Virginia?*

Response: In my experience, interagency coordination can not only help the agencies involved achieve their purpose, but it can help the people and entities seeking to promote broadband access and inclusion efforts ensure that they are aware and availing themselves of the opportunities that Congress has established.

Of course, key to the success of this coordination effort, particularly as it relates to West Virginia, is for the FCC to complete the broadband maps as quickly as possible so the funding included in the Infrastructure Investment and Jobs Act can begin to get broadband to these communities. Inaccurate maps have meant that West Virginia residents have gone unserved with

this essential service. Your leadership on mapping over the years has resulted in a real opportunity to get the map right. Those maps will help ensure that the funding currently allocated to the NTIA and USDA are well targeted.

Once there is a sound map available, I think regular meetings between not only the heads of the agencies, but also at the staff level will help identify potential challenges early in the process, so they can be addressed before they become problems. If confirmed, I would be pleased to assist the Chairwoman in any way she deems best to help promote meaningful coordination based on regular meetings with others at these important agencies.

Question 8: *What are your thoughts regarding tech neutrality in terms of federal dollars being spent? Is there a particular form of broadband delivery that should take priority?*

Response: The objectives of the Infrastructure Investment and Jobs Act (IIJA) lay out that Congress wants broadband infrastructure that can “easily scale,” “meet the evolving connectivity needs of households and businesses,” and “support the deployment of 5G, successor wireless technologies, and other advanced services.” I agree with these objectives.

In order to make these assessments, it is critical for the federal government to rely on objective technical analysis by engineers to ensure the best use of federal funds to maximize long term value to communities. Many Members of Congress, led by Senators Thune and Klobuchar, have weighed in with the FCC to improve its assessments of projects that seek federal dollars and to scrutinize the technical capabilities of applicants before federal dollars are given out. I completely agree.

Question 9: *What role do you see low earth orbit satellite constellations playing in the short term and long term as far as providing sufficient service in a mountainous and heavily forested state like West Virginia?*

Response: The purpose of lowering the orbit of these satellites was to improve the latency of satellite broadband delivery. However, the drawback of this approach is that it requires the base station to “see” the satellite at a lower point on the horizon. This means that mountainous and heavily forested areas—like those in West Virginia— are more difficult for base stations to operate as opposed to more open and flatter rural areas. However, I remain confident that the federal investment in infrastructure under the Infrastructure Investment and Jobs Act makes traditional on the ground infrastructure feasible even in the most difficult to serve areas.

Question 10: *The internet ecosystem continues to grow, with more broadband providers who are also recipients of government broadband funding. This trend is likely to accelerate considerably as NTIA and the states begin the award infrastructure funds for broadband network deployment. However, the recipients of government funding can be subject to vastly different regulations depending on their characterization or their historical designation as an incumbent LEC—e.g., pole rates, labor requirements, tax laws, service requirements, legacy telephone obligations, and legacy cable obligations. These varying regulations have real impacts on their deployment, operating costs, and competitiveness. Should the government create more parity amongst the*

recipients of government funds in the interest of facilitating network modernization, broadband deployment and creating a more competitive market?

Response: I believe that the FCC should do what it can under the law to create parity and ensure that robust, scalable broadband networks are deployed and available to every consumer and business across the nation. However, there may be limitations to what the FCC can achieve without Congress addressing some of the disparate requirements. For example, Section 224 of the Communications Act grants access to poles in certain situations but does not apply uniformly to all poles across the nation. Moreover, the provision that grants access to certain poles is currently limited to only telecommunications carriers and cable providers. The FCC currently is limited in its pole attachment jurisdiction to ensure broadband deployment across the nation, and if confirmed, I would very much look forward to working with you and your office to further engage on this issue.

Senator Rick Scott

Question 1: *You played a role in creating the 2015 Net Neutrality Rule during your time as a staff member at the FCC, which was rescinded under former FCC Chairman Pai because it caused broadband investment to decline and stifled innovation.*

- 1. You claim this rule rescension has made consumers worse off – how so?*
- 2. If confirmed, would you work to reinstate that rule?*
- 3. If so, would you craft it any differently than the 2015 rule?*

Response: As Chairwoman Rosenworcel said at her November 17 confirmation hearing, the 2017 net neutrality repeal was broader than the bright line rules—it removed FCC oversight over broadband entirely. The COVID-19 pandemic demonstrated that broadband is an essential service and consumers are worse off when there is no government oversight over an essential service.

Among other things, the FCC’s relinquishment of its oversight left California firefighters without recourse when a broadband company throttled its service during the Mendocino complex fire, which at the time was the biggest in state history, and left consumers without recourse when Frontier charged monthly fees to consumers who bought their own modems. It also resulted in some small wireless providers having to slow or halt fiber deployment because pole owners either charged higher rates or refused to negotiate a rate.

In addition, researchers at Northeastern University and the University of Massachusetts at Amherst reviewed crowdsourced data from the Wehe app and found that for mobile internet service providers in the United States, “we don’t see evidence of internet service providers throttling only when the network is busy; as far as we can tell, it’s 24/7, and everywhere.” Professor David Choffnes, the lead researcher, noted that this throttling created a “slippery slope,” because “[t]oday it’s video, but what is it going to be tomorrow? When internet service providers decide to take control and make decisions on behalf of consumers and/or content providers, what’s going to be the fallout for those decisions? Is it actually in everyone’s best interests?”

It’s also important to note that there is ongoing litigation over the 2017 repeal, as well as a growing number of states that have passed their own net neutrality laws and regulations. California, Colorado, Maine, Oregon, Vermont and Washington State have passed net neutrality laws and Hawaii, Montana, New Jersey, New York, and Rhode Island have put in place net neutrality contracting requirements. As a result, broadband providers have been cautious about their business practices.

My support for reinstating FCC oversight of broadband and net neutrality rules is well-known. Should the Chairwoman move forward with a proceeding to adopt net neutrality rules and reclassify broadband Internet access providers as a Title II telecommunications service, the Commission would have to start a new proceeding that will look at changes in, among other things, technology, how consumers use the Internet, and business practices. If confirmed, I would look at the totality of the record and the law and come to a conclusion with input from

staff, my fellow commissioners and members of this Committee about the proper scope of net neutrality rules and forbearance from Title II obligations.

Question 2: *Your former employer, Locast, is currently under a court injunction that restrains Locast from broadcasting after a court concluded it was violating the law by streaming TV station signals without negotiating payment from those broadcasters.*

- 1. Can you describe your role at the company and any involvement in this issue?*
- 2. If confirmed, do you believe you can credibly regulate an industry from which the company you were involved with is banned?*

Response: Locast was a nonprofit service that provided local broadcast signals to people who couldn't receive them, including many in rural areas of the country. It relied on a copyright exemption (17 USC Sec.111(a)(5)) for nonprofits and in a case of first impression, a District Court judge ruled that Locast was not entitled to that exemption. While the District Court Judge found that the statutory copyright exemption didn't apply, he never ruled on final liability. I was not employed by Locast or its parent nonprofit organization, Sports Fan Coalition NY, Inc. (SFCNY). I served without compensation on the Board of SFCNY.

In my role as an SFCNY Board member, I participated in quarterly Board meetings. In those meetings I reviewed financial statements and plans to expand the service. I was also involved in the decision to shut the service down after the District Court ruling that Locast did not qualify for the copyright exemption.

If I am confirmed, I will approach each proceeding involving broadcasters as I would any proceeding—with an open mind. As required by the Administrative Procedure Act, if confirmed, my decisions will be dictated by the totality of the record in a proceeding and the law, along with input from staff, my fellow commissioners, and the Members of this Committee. I will note, however, that the FCC's jurisdiction does not extend to Fox News and its programming.

I agree that it is extremely important for policymakers to avoid any actual or apparent conflict of interest. On October 26, 2021, I signed an ethics agreement with the FCC's Designated Agency Ethics Officer. In this agreement, I committed that I would not participate "personally and substantially....in any particular matter" involving SFCNY "unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)."

Question 3: *Some of your previous tweets have been described as "hyper partisan," including one tweet where you stated that Fox News is "state sponsored propaganda" and insinuated that a conservative leaning media outlet, Sinclair, did not deserve its broadcast licenses.*

- 1. Do you still stand by these statements?*
- 2. If confirmed, how would you define "misinformation"?*
- 3. If confirmed, as the FCC has authority over broadcast licenses, among other regulations that impact content, how are Americans supposed to trust in your ability not to favor enhanced censorship of certain opinions or speech with which you may personally disagree?*

4. *In a March 25, 2020 tweet you stated, “how sad that their ideology has overtaken their duty 2 serve their constituents” describing Senate Republicans. Could not the same statement be used against you given that you are now nominated to serve on a commission that represents American taxpayers?*
5. *How can American citizens trust that you will put aside your ideologies, and serve objectively and in the best interests of Americans?*

Response: As I told Senator Cruz at the December 1 hearing, I believe that I have been unfairly characterized as wanting to censor conservative voices. Indeed, my record indicates otherwise. I spent years helping conservative cable networks like Newsmax, Wealth TV (the predecessor to OANN), and the Blaze get access to cable subscribers when cable systems wouldn't carry them. That's why the CEO of Newsmax and the President of OANN, along with other conservatives, support my confirmation.

I opposed the Sinclair-Tribune merger not because of Sinclair's conservative views, but because it would have “put far too much power over local news and information in the hands of one company.”

It was the FCC under Chair Ajit Pai- that effectively blocked the merger because it found that “there was a substantial and material fact as to whether Sinclair affirmatively misrepresented or omitted material facts with the intent to consummate this transaction without fully complying with the media ownership rules.” I supported that decision, and said that “[i]f true, this allegation raises a legitimate question as to whether Sinclair is fit to be a licensee at all, and not just a licensee of Tribune's stations. This is consistent with the Administrative Law Judge, appointed by then-Chairman Pai, who said that Sinclair's misrepresentations “may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license.”

I also think it is unfair to characterize my tweets as “hyperpartisan.” While unsurprisingly I am generally more inclined to agree with Democrats on policy, I have on many occasions publicly praised or expressed agreement with Republicans. In just over the past year, I have praised or publicly agreed with, among others, Senators Wicker, Moran, Sasse, Romney, Portman, Cornyn, Kennedy, Murkowski and Hawley and Representatives Issa and Scalise.

I understand there have been some concerns raised regarding my tweets. I have always worked to address policy matters and not engage in personal attacks. For example, the March 25, 2020 tweet was about opposition to allowing E-Rate funding for home connections during the beginning of the COVID-19 pandemic.

I worked in government previously and understand that my role will be much different if I am confirmed. My decisions will be dictated by the totality of the record in a proceeding and the law, along with input from staff, my fellow commissioners, and members of this Committee. Having been in government I know its core values—responsiveness, transparency, integrity—and that's what you'll get from me if I am confirmed.

Question 4: *Do you believe the government should regulate internet rates?*

Response: No.

Question 5: *As Congress gives out billions of new funding to build out broadband through the USDA, NTIA, and the FCC, if confirmed, how do you plan on ensuring that the dollars the federal government spends on broadband buildout is not riddled with fraud, waste, and abuse?*

Response: I think the FCC must take four steps to ensure that funds for broadband deployment are spent efficiently and effectively. First, the FCC must conduct serious due diligence to ensure that possible recipients have the technical, operational and financial expertise to build the promised networks. Second, the FCC must conduct oversight to ensure that the promised networks are being built. This includes not only requiring progress reports from the recipients, but actually visiting the sites where networks are being built to ensure that they are indeed being built as promised. Third, the FCC must hold those who do not build promised networks accountable. This accountability must include more than fines—it must include requiring a defaulting entity to remit the USF funds and prohibiting that entity from participating in the next round of funding. Fourth, the FCC must coordinate with NTIA, USDA, and other agencies that fund broadband to ensure that the programs are complementary and consistent with the law, and that they direct funding to appropriate areas without unnecessary duplication.

Question 6: *A number of private companies are investing in satellite broadband solutions. Do you believe private investment in satellite internet could eventually reduce or replace the need for government-funded broadband buildout?*

Response: It is unclear that satellite broadband will replace the need for public investments in broadband infrastructure. In fact, the FCC under the Rural Development Opportunity Fund invested \$886 million into Starlink, indicating that even satellite broadband will require public investments. There are also challenges with satellite broadband that do not make it a replacement for traditional fiber-based deployment. That said, satellite broadband is a useful tool in reaching the absolute hardest and most difficult areas to connect and will serve key policy goals of ubiquitous wireless connectivity.

Senator Cynthia Lummis

Question 1: *As you know, the country that wins the 5G race will determine the standards and security of 5G infrastructure throughout the globe and will lead in new technologies and services. We are in jeopardy of losing the 5G race and need mid-band spectrum to launch ahead of our competition. It is critical the Commission study this band closely and get the policy right. Will you commit to move quickly to establish new 12 GHz rules if you find coexistence is possible between terrestrial and satellite users in the band?*

Response: As I stated at the hearing, 5G is going to be a transformative technology. I agree that the Commission should study the 12 GHz band issues before moving forward. If confirmed, I look forward to reviewing the record of the proceeding.

Question 2: *Recently Acting Chairwoman Rosenworcel confirmed to this committee that she is opposed to rate regulation of service providers. Do you agree with her stance on this issue?*

Response: Yes.