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June 24, 2016

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

I write regarding the FCC Wireline Competition Bureau's recent decision to extend the reply period on the FCC's privacy NPRM to July 7, 2016. The original deadline given by the FCC for replies was June 27. This extension was authorized "[i]n order to allow interested parties to respond to the voluminous record in this proceeding."

As you recall, Sen. Boozman and I wrote to you on May 19 requesting that you extend the initial comment period "by a reasonable period of time, but not less than 45 days." We made this request because of the length and complexity of the NPRM and because, at the time, a bipartisan majority of the FCC agreed that the comment period should be extended.

In your response to us, you observed that the Wireline Competition Bureau "explained in its Order denying various [extension] requests that it is the policy of the Commission that extensions of time shall not be routinely granted." You continued, "Commission proceedings often involve novel and important issues, yet granting an extension is not favored, in order to keep timely resolutions of proceedings." You lumped this action with the Commission's E-Rate, Inmate Calling, and Consumer Video Navigation Choices proceedings as ones where "the Commission has set similar comment deadlines in comparable proceedings[.]" But now it seems one of these proceedings is not like the others.

I therefore request your prompt response to the following questions.

1. Did the FCC receive any formal or informal requests from interested parties to extend this reply period? If so, please identify them.
2. The Wireline Competition Bureau previously asserted that it is "the policy of the Commission that extensions of time shall not be routinely granted."
 - a. Is that still the policy of the Commission?
 - b. If so, why is this situation not "routine[]"?

- c. If this situation is not “routine[],” what distinguishes it from the presumably “routine[]” earlier comment deadline?
 - d. Is it “routine[]” for a bipartisan majority of the FCC to publicly call for a comment-period extension?
3. In your letter to Sen. Boozman and me, you pointed to E-Rate, Inmate Calling, and Consumer Video Navigation Choices as “comparable proceedings.”
- a. Did the FCC receive any requests to extend the comment period in those “comparable proceedings”?
 - i. If so, did the FCC grant any such requests? When?
 - ii. If so, what, if anything, distinguished those “comparable proceedings” from this one?
 - b. Did the FCC receive any requests to extend the reply period in those “comparable proceedings”?
 - i. If so, did the FCC grant any such requests?
 - ii. If not, what, if anything, distinguished those “comparable proceedings” from this one?

Please respond to these questions by June 30, 2016. If you are unable to do so, please inform my office if an extension or additional time is necessary.

Sincerely,



Jeff Flake
Chairman
U.S. Senate Committee on the Judiciary
Subcommittee on Privacy, Technology & the Law



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 19, 2016

The Honorable Jeff Flake
Chairman
Subcommittee on Privacy, Technology, and the Law
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Flake:

Thank you for your letter regarding the Wireline Competition Bureau's (WCB or Bureau) decision to extend the reply period on the FCC's Broadband Privacy Notice of Proposed Rulemaking (NPRM) to July 7, 2016.

Please find below answers to your questions.

- 1. Did the FCC receive any formal or informal requests from interested parties to extend this reply period? If so, please identify them.**

Response: Yes. The Association of National Advertisers, the State Privacy & Security Coalition, Inc., the American Advertising Federation et al., and the American Cable Associations (ACA) et al. filed formal requests for an extension of time for the comment period for the Broadband Privacy NPRM. Of these requests, ACA et al. specifically asked for a reply comment period of 75 days. The FCC also heard from other interested parties, including New America's Open Technology Institute et al., and the Center for Digital Democracy et al., opposed to granting any extension in this important proceeding.

- 2. The Wireline Competition Bureau previously asserted that it is "the policy of the Commission that extensions of time shall not be routinely granted."**

- a. Is that still the policy of the Commission?**
- b. If so, why is this situation not "routine[]"?**
- c. If this situation is not "routine[]," what distinguishes it from the presumably "routine[]" earlier comment deadline?**
- d. Is it "routine[]" for a bipartisan majority of the FCC to publicly call for a comment-period extension?**

Response: Yes. Under 47 C.F.R. § 1.46, the Commission's policy remains the same: extensions of time shall not be routinely granted.

However, the Commission's rules and policies also allow for flexibility to respond to changing circumstances. In the Order issued by the Wireline Competition Bureau (Bureau) denying the requests for an extension in time of the comment and reply comment period, the Bureau noted that the schedule established in this proceeding affords significant time for public participation. Yet, as the record continued to develop, the Bureau determined that providing additional time for reply comments would allow interested parties an opportunity to more fully respond to the voluminous record in this proceeding.

The Commission routinely receives formal and informal requests for additional time to file comments and reply comments in a variety of proceedings, and we take into account the views of all persons and entities.

3. **In your letter to Sen. Boozman and me, you pointed to E-Rate, Inmate Calling, and Consumer Video Navigation Choices as “comparable proceedings.”**
 - a. **Did the FCC receive any requests to extend the comment period in those “comparable proceedings”?**
 - i. **If so, did the FCC grant any such requests? When?**
 - ii. **If so, what, if anything, distinguished those “comparable proceedings” from this one?**
 - b. **Did the FCC receive any requests to extend the reply period in those “comparable proceedings”?**
 - i. **If so, did the FCC grant any such requests?**
 - ii. **If not, what, if anything, distinguished those “comparable proceedings” from this one?**

Response: In the E-Rate proceedings referenced in my letter, no parties filed requests to extend the initial comment or reply comment periods.

In the 2015 Inmate Calling proceeding referenced in my letter, no parties filed requests to extend the initial comment period. However, two parties filed motions requesting a 15-day extension of the reply comment deadline. In that instance, the Bureau determined that a modest time extension of seven days would allow parties to provide the Commission with more thorough reply comments to facilitate the compilation of a complete record in the underlying proceeding, without causing undue delay to the Commission's consideration of these issues, and granted the parties requests in part. Similar to the week-long extension the Commission determined was warranted in the 2015 Inmate Calling proceeding, a similar extension for reply comments was granted in the Broadband Privacy proceeding.

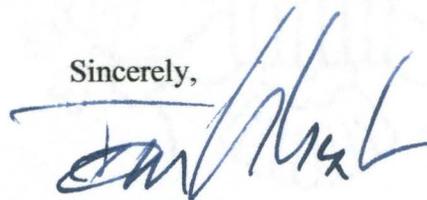
Finally, in the Consumer Video Navigation Choices proceeding referenced in my letter, the Media Bureau received one request, filed by ACA, for a 30-day extension of both the comment and the reply period. The Media Bureau determined that a 30-day extension request was not

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warranted, but determined that a seven-day extension to the comment filing deadline and reply comment filing deadline would ensure that parties had enough time to file comments.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a horizontal line drawn above the first few letters.

Tom Wheeler