

United States Senate

WASHINGTON, DC 20510

1155

November 19, 2015

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

Dear Chairman Wheeler:

We write to you today regarding the authority granted to the Federal Communications Commission's (FCC's) Enforcement Bureau (EB). As members of the Senate Commerce Committee, we are committed to exercising full oversight over the EB to ensure there is complete fairness and transparency related to its activities.

The FCC's enforcement authority is a key component to ensuring compliance with the nation's communications policy set forth by Congress in the Communications Act of 1934 and other statutes. As part of that process, each year, hundreds of thousands of Americans file complaints with the FCC about potential violations of key rules. Since you assumed the chairmanship in November 2013, the FCC has received over 564,000 consumer complaints. Yet, the FCC's track record in taking enforcement action in response to actual complaints filed at the agency remains unclear. Naturally, consumers making the effort to file a complaint expect the agency to protect their interests. As such, we are interested in ensuring that FCC enforcement actions are pursued and carried out in an objective manner based upon tangible evidence of misconduct.

However, concerns have been raised about the EB aggressively pursuing substantial, unprecedented, and seemingly arbitrary fines against licensees and non-licensees alike. While the mission of the EB is to ensure compliance with the Communications Act and the FCC's rules, we are concerned that the EB is exceeding its authority by undertaking "fishing expeditions" rather than investigating specific violations based upon tangible evidence of misconduct. Moreover, it appears that the EB is more concerned with issuing fines and grabbing headlines than it is with ensuring compliant behavior with existing FCC rules.

Most recently this was made evident when the FCC chose to issue a fine against a company for the use of deauthentication technology even in the absence of clear rules governing the use of such technology, or whether the alleged use of such technology even falls within the scope of the FCC's authority. Rather than undertake a rulemaking or proceeding to delineate the rules of the road for companies to adhere to, as requested by several of the FCC's Commissioners, the FCC issued a Notice of Apparent Liability (NAL) for alleged conduct that does not fall under any existing FCC rules.

To advance our understanding of the FCC's enforcement processes and activities, we seek your timely response to the following requests for information:

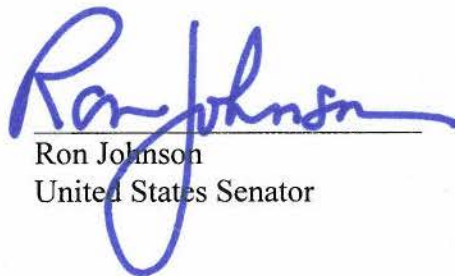
- 1) What are the FCC's internal rules and procedures for conducting investigations and taking enforcement actions, including the calculation of forfeiture orders? What policies and procedures does the FCC's EB have in place to ensure its activities comply with the statute and the FCC's rules? What objective criteria is the EB required to follow to determine (1) which actions to pursue and (2) the basis upon which alleged misconduct is evaluated?
- 2) Describe your strategy for carrying out the FCC's enforcement responsibilities, as well as the FCC's enforcement actions in response to consumer complaints, and explain how the FCC is working to implement this strategy.
- 3) Please provide copies of any directions, instructions, or guidance that both your office and the EB has provided, either externally or internally, concerning enforcement actions, investigations, and plans for responding to consumer complaints.
- 4) Explain how EB actions are communicated to the other FCC Commissioners prior to their release. How much notice is each FCC Commissioner afforded on items that do not require a vote by the full Commission?
- 5) Identify every FCC enforcement action (*e.g.*, consent decree, forfeiture order, notice of apparent liability, etc.) resulting in a monetary penalty of \$1 million or more over the last ten years. For each such action, provide the date, the penalty amount, and an explanation of how the FCC calculated the monetary penalty.
- 6) As underscored in a recent *Politico* article, the EB does not consistently follow through with collection of fines. Please identify every NAL proposing a forfeiture of more than \$100,000 issued since 2005. Of such NALs, please identify those that led to a forfeiture order. Of such forfeiture orders, please identify the recovery status for each. Please identify every civil suit brought to-date to recover forfeitures.
- 7) Please provide the legal justification for imposing a penalty on a company in the absence of specific FCC rules governing such conduct.

We appreciate your assistance with these requests and ask for your response no later than December 3, 2015. Thank you for your cooperation in this matter.

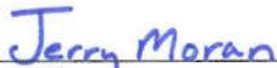
Sincerely,



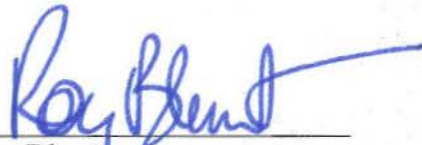
Dean Heller
United States Senator



Ron Johnson
United States Senator



Jerry Moran
United States Senator



Roy Blunt
United States Senator



Steve Daines
United States Senator