

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

December 10, 2013

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20515

Dear Chairman Wheeler:

Last Congress, after more than 60 years, the FCC finally removed the “Fairness Doctrine” from the Code of Federal Regulations. Over the course of its time on the books, FCC Chairmen and Commissioners have acknowledged that it was an intrusion by the FCC into the freedoms of speech and the press that could not be supported by law. Given the widespread calls for the Commission to respect the First Amendment and stay out of the editorial decisions of reporters and broadcasters, we were shocked to see that the FCC is putting itself back in the business of attempting to control the political speech of journalists. It is wrong, it is unconstitutional, and we urge you to put a stop to this most recent attempt to engage the FCC as the “news police.”

On November 1, the Federal Communications Commission issued a Public Notice announcing a field test for the Research Design of a “Multi-Market Study of Critical Information Needs” (the “CIN Study”).¹ The proposed design for the CIN Study² shows a startling disregard for not only the bedrock constitutional principles that prevent government intrusion into the press and other news media, but also for the lessons learned by the Commission’s experience with the Fairness Doctrine. Although the Commission’s stated reason for the report is to inform the Commission in taking deregulatory action to lower “market entry barriers for entrepreneurs and other small businesses,”³ it is hard to read this and see it for anything other than what it is: Fairness Doctrine 2.0.

¹ *The Office of Communications Business Opportunities Announces Market for Critical Information Needs Research Field Test*, MB Docket No. 12-30, Public Notice, DA 13-2126, *rel.* Nov. 1, 2013.

² *Office of Communications Business Opportunities Announces Release of Critical Information Needs Research Design*, Public Notice, DA 13-1214, *rel.* May 24, 2013, attaching “Research Design for the Multi-Market Study of Critical Information Needs: Final Research Design,” prepared by Social Solutions International, Inc., Apr. 2013, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1214A2.pdf (last checked Nov. 5, 2013) (“CIN Study Design”).

³ 47 U.S.C. § 257.

The study plans to undertake a “Qualitative Analysis of Providers,” which appears to seek information on how all local news outlets – whether regulated by the FCC or not – select and prioritize news coverage. As laid out in the study design, the study intends to “ascertain the process by which stories are selected, station priorities (for content, production quality, and populations served), perceived station bias, perceived percent of news dedicated to each of the eight CINs, and perceived responsiveness to underserved populations.”⁴ Specifically, the study plans to ask journalists, station owners, and corporate media group owners about their news philosophy, what factors influence story selection, and whether and why story ideas are rejected in the newsroom.

The Commission is not a research institution but rather a government entity with authority to regulate some of the targets of the CIN Study. The Commission has no business probing the news media’s editorial judgment and expertise, nor does it have any business in prescribing a set diet of “critical information.” These goals are plainly inappropriate and are at bottom an incursion by the government into the constitutionally protected operations of the professional news media.

Beyond the fact that many of the goals of the study are inappropriate, we are equally concerned by the Commission’s failure to state an adequate statutory basis for its action. The Commission has not offered any legitimate justification for how a study of the “critical information needs” of communities directly contributes to its statutory duties, *i.e.*, to review the impact of law on market entry barriers for entrepreneurs and other small businesses.

Finally, we are also interested in how the Commission reached its determination that the scope of the proposed study should be limited to Columbia, SC. The original scope of the study would have covered multiple markets of varying sizes, but ultimately the FCC decided to focus its initial efforts in just one city. Below, we seek answers as to the Commission’s rationale for this decision.

In order to shed light on how the Commission reached the decision that the CIN Study, at a cost to taxpayers of \$900,000, would be resources well spent,⁵ and also to understand how it furthers the Commission’s statutory goal of “identifying and eliminating... market entry barriers for entrepreneurs and other small businesses” under Section 257, we request that you respond to each of the questions below by January 10th and before proceeding further with any field test of the study design:

1. How does the statutory language of Section 257 support the Commission’s contention that it has authority to question the news media about editorial discretion and the content it chooses to produce?
2. What other purposes or proceedings are the CIN Study designed to serve? If the CIN Study is intended to serve other purposes or proceedings, detail the statutory provisions that authorize such an undertaking and how the study will be used to further them.

⁴ CIN Study Design at 12.

⁵ Make, Jonathan, “FCC, Having Spent \$209,000 on Barriers-to-Entry Preliminaries, May Spend \$918,000 for Research,” *Communications Daily*, May 29, 2013, at 2-3.

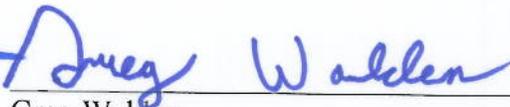
3. What steps are being taken to ensure that the CIN Study respects the First Amendment rights of the news media to speak, and audiences to receive, information unfettered by direct or indirect intrusion by the government?
4. How, if at all, will the CIN Study results be used in the Commission's quadrennial media ownership proceeding?
5. How will the results of the CIN Study be applied practically? Does the Commission expect to offer governmental endorsement of the results and recommendations from the study? Will the results and recommendations for news coverage be further incorporated into regulation of broadcast journalism?
6. The press has reported that the Commission expects to spend north of \$900,000 for the full study. Does that include design and implementation of the field test? If not, how much money has been allocated to the field test, and how will the field test impact the cost of later phases of the full study?
7. How do the changes to the study design respond to the public comments made in May 2013? Detail the considerations that informed the changes to the study design as well as the considerations that drove the selection of Columbia, SC as the appropriate field test site.

The First Amendment to the U.S. Constitution is the beacon of freedom that makes the United States unique among the world's nations. We urge you to take immediate steps to suspend this effort and find ways that are consistent with the Communications Act and the Constitution to serve the Commission's statutory responsibilities. If you have any questions, please contact David Redl or Grace Koh with the Committee on Energy and Commerce at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



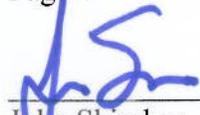
Greg Walden
Chairman
Subcommittee on Communications & Technology



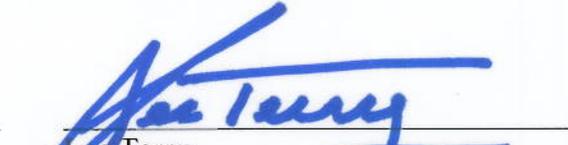
Joe Barton
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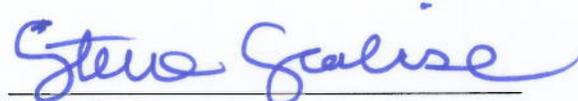
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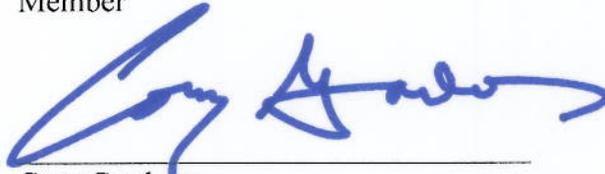
Bob Latta
Member



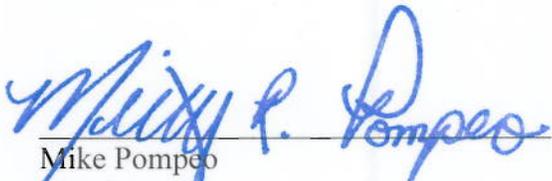
Leonard Lance
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Cory Gardner
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Mike Pompeo
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Billy Long
Member



Renee Ellmers
Member

- cc: The Honorable Henry A. Waxman, Ranking Member
The Honorable Anna Eshoo, Ranking Member, Subcommittee on Communications &
Technology
Commissioner Mignon Clyburn, FCC
Commissioner Jessica Rosenworcel, FCC
Commissioner Ajit Pai, FCC
Commissioner Michael O'Rielly, FCC