

U.S. Senator Maria Cantwell

U.S. Senate Committee on Commerce Executive Session and Nominations Hearing

Nominees: Honorable Jessica Rosenworcel, to be a Commissioner of the Federal Communications Commission (PN1322); Mr. Alvaro M. Bedoya, to be a Commissioner of the Federal Trade Commission (PN1156); Ms. Jainey Kumar Bavishi, to be Assistant Secretary of Commerce for Oceans and Atmosphere (PN1024); Mr. Arun Venkataraman, to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service (PN606)

November 17, 2021

Executive Session Opening Statement

[\[AUDIO\]](#) [\[VIDEO\]](#)

Cantwell: Good morning. We are holding an executive session this morning to mark up three bills and vote on several nominations. After the executive session we'll proceed directly to a hearing to consider four nominations.

This morning we are considering the Anti-Spoofing Penalties Modernization Act. This legislation would amend the Communications Act to double current fines and penalties for caller ID spoofing, when a caller deliberately disguises their true identity behind the false caller ID information. Forfeiture and penalty for a civil violation and criminal fines would increase from \$10,000 to \$20,000 and legislation would increase the cap for continuing violations to \$2 million. I want to thank Senators Collins, Peters, Sinema, and Warnock for their work on this important issue.

Senators Thune and Schatz have worked on the Learning Excellence and Good Examples for New Developers Legend Act of 2021. The bill would allow scientists, engineers, and others in the private sector or academia to access NOAA operational or satellite models and data to support innovation and weather and climate modeling.

This legislation would require NOAA to make public or open source the code and data used in these models, and this legislation would include exemptions for models that would pose a risk to national security and trade secrets or that violate intellectual property and contracts. It would provide no administrator authority to engage in the federal agencies and private vendors to ensure that infrastructure has the support the public needs, and would authorize \$10 million over the next five years.

The bill also requires a report to Congress within two years after enactment on how the models have been made publicly available. The committee passed this previous Legend Act by voice vote in 2020 and it was passed by the Senate and unanimous consent last December.

And also on the markup is the American Cybersecurity Literacy Act. This legislation instructs the National Telecommunications and Information, in consultation with the Department of Homeland Security, to develop a cybersecurity campaign on cyber. The campaign would identify IT infrastructure that may create cybersecurity risks and provide information on how to prevent the cyber-attacks, and reduce risks when using publicly available Wi-Fi, and direct people and businesses to federal resources. So I want to thank Senators Klobuchar and Thune for this legislation.

And during the executive session, we'll be voting on nominees to fill positions at the Federal Maritime Commission, the Department of Commerce, and the Department of Transportation as well as Coast Guard promotions.

We'll be voting on the nomination of Max Vekich, the Commissioner of the Federal Maritime Commission. The independent federal agency is responsible for ensuring the ocean and shipping and commerce remain fair and competitive. In light of many issues, COVID challenges, and congestion, I think his nomination is pivotal to making sure that we have the right decision making in place. He is the right person for this job and is supported by both labor and business industry.

Next we have Dr. Laurie Locascio, who has been nominated to be the Department of Commerce Undersecretary for Standards and Technology. If confirmed, she will serve as the Director of National Institute of Technology, NIST, and this, obviously, as we know, provides essential guidance on these important issues. She has served over 30 years as Division Chief in Biochemistry and Director of Material Measurement Laboratory in Association. So, we will vote also on Christopher Coes, to be the Assistant Secretary of Policy of the Department of Transportation. He would play a critical role in the department's surface transportation initiatives and implementing provisions of the Infrastructure Investment and Jobs Act. You will also be an important adviser in aviation policy in essential airport infrastructure programs.

Nominations Hearing Opening Statement

[\[AUDIO\]](#) [\[VIDEO\]](#)

Cantwell: Today, the Commerce Committee will consider very important nominees. And I want to thank them for their willingness to serve. First we will consider the nomination of Jessica Rosenworcel to be commissioner and chair of the Federal Communications Commission. Senator Blumenthal will be providing a formal introduction, but I would like to say a few words.

The pandemic has magnified the deep digital divide in our country and if confirmed, Chairwoman Rosenworcel be responsible for leading the agency's important work to ensure broadband accessibility for all Americans. All schools transitioned students to learning at home last year. Twenty percent of students in Washington State did not have a reliable internet

connection that would have allowed them to participate in remote learning. Over 16,000,000 K-12 students in the United States did not have access to reliable broadband at the beginning of the pandemic. And over the past several years, I've heard many stories about students sitting in parking lots to access their Wi-Fi do their homework, and concern teachers whose students don't have the connectivity.

The pandemic has made clear that the broadband access is no longer a luxury but a necessity to participate in nearly all aspects of society, including educating our children. Yesterday's historic \$65 billion investment in broadband is a start. But obviously, we need the mapping to go with this before we can get anything really done. As the first woman to serve as its Chair, Ms. Rosenworcel brings nearly a decade of experience and an important role for the commission. I look forward to hearing her thoughts on how the agency moves forward in our information age.

Next we will consider the nomination of Alvaro Bedoya to be Commissioner on the Federal Trade Commission, who will be joining us remotely. Senator Luján will be introducing Mr. Bedoya later this morning, and we welcome him and his family who are participating.

I would also like to take the opportunity to welcome a bipartisan group of commissioners, the Chair of the FTC, who have joined us in support of him this morning. The Federal Trade Commission's core mission to protect consumers from unfair and deceptive practices in commerce and promoting competition by enforcing the nation's antitrust laws. In today's information economy, the FTC's mission has never mattered more. In just the last several years, we've seen a 45% increase in consumer fraud and deception complaints to the FTC, as well as a surge merger filings that are straining the agency's capacity to rigorously investigate mergers.

The committee has strongly advocated for significant new resources to create the staff, and a dedicated Consumer Privacy Data and Security Bureau at the FTC and restore the FTC's ability to seek penalties from companies that violate the law and victimize consumers, as well as comprehensive federal privacy legislation. We've also been exploring new legal authority to tackle privacy and data security and ways to prevent abuse that are all too common online.

Mr. Bedoya will bring a wealth of experience and expertise to this role. As a professor at Georgetown Law and founder of its Center on Privacy and Technology, he has dedicated his career to advancing the law and policy on privacy and surveillance. And Mr. Bedoya has served as Chief Counsel on the Senate Judiciary Committee on Privacy, Technology, and the law. So I believe he's the right person to carry out this mission and to ensure that consumers can harness the opportunities of the Information Age.

Next we'll consider the nomination of Jainey Bavishi, to be the deputy NOAA administrator. Welcome to you and your family. Ms. Bavishi, her nomination could not be more timely with the Infrastructure Investment and Jobs Act, and hopefully soon, the Build Back Better Act requires strategic leadership to help NOAA execute all its climate and coastal resiliency goals, so I'm confident that she can provide that leadership. She has an impressive background, including leading climate resiliency programs for New York City's Mayor's Office of Climate Resiliency, the

White House Council on Environmental Quality, and previously she served at NOAA where she was responsible for environmental justice and led the agency's policies and initiatives on the Deepwater Horizon oil spill.

For far too long, we have kept the environmental justice separate from climate change adaptation and mitigation at the expense of underserved communities of color and Tribal communities. And these communities should be at the forefront of adaptation and mitigation. This is particularly of concern to me in the State of Washington where so many of our Tribes are on our coastal communities and literally need to move to higher ground.

Finally, we will hear from Arun Venkataramansay. Thank you so much for your willingness to serve to be Assistant Secretary of Commerce and Director General at the United States Foreign Commercial Service and Department of Commerce. If confirmed, he would play a key role in helping small and medium sized enterprises enter and compete in foreign markets.

More than 80% of the world's purchasing power and 95% of its population resides outside the United States. In Washington state, one in three jobs depend on trade and access to overseas markets is critical for small and medium sized manufacturers in my state and across the United States. These companies provide for one third of U.S. merchandise exports. This is why we passed the United States Innovation and Competitiveness Act because it provides more funding for manufacturers, research funding, and the manufacturing extension program to support supply chain resiliency.

He has more than 20 years of experience in advising companies on international organizations in the US government on international trade issues, and I look forward to hearing from him on the challenges he sees in facing American businesses and how we can address them.

So thank you to all the nominees for your willingness to serve. And I now like to turn to my colleague, Senator Wicker for his opening statement.

Vekich Statement

[\[AUDIO\]](#) [\[VIDEO\]](#)

Well, I would like just to say a few words about how important Federal Maritime Commission is to all of us, particularly at this moment, as we're struggling to see increases in supply chain activity.

I'm very supportive because I want a Federal Maritime Commission that looks at increasing competition and making sure that we get products to people who need them. So somebody who has served on the docks for much of his life is certainly a nominee that understands what it takes to be making important decisions on this activity.

Mr. Vekich, as I mentioned in my opening statement, is supported by both labor and business. So that's an unusual position. Usually, most nominees come here, supported by one or the other, not both. So I certainly appreciate that he is supported by both of those organizations who want a knowledgeable dock worker at the Federal Maritime Commission. I want to take the opportunity to say how important it is too, that the many men and women of the ILWU continued to work on the docks during the pandemic.

As many of you know, we lost many of them to the COVID disease. And the fact that people continued to move product and continued to work under even those extreme conditions just says a lot about the working men and women who helped deliver products to us — that they continued to do their job. And I think Mr. Vekich is an example of that.

Question & Answer with the Nominees

[\[AUDIO\]](#) [\[VIDEO\]](#)

Cantwell: Thank you. Thank you, Senator Sinema. I'll now take my questions. I don't know if anybody else is going to join us. But I thank the witnesses. I know it's been a long morning, already. But I think there's important issues to put on to the record in one fashion or another.

Mr. Venkataraman, I'm going to ask you to submit something for the record about commercial service leveraging its expertise for U.S. manufacturers on the supply chain. We had a hearing on, obviously, our legislation that's being considered, USICA, and also had some supply chain witnesses who submitted very lengthy answers, which was very helpful for us in developing legislation. So we'd ask you to submit a very lengthy answer on what and how the Commercial Service could be used on the expertise of helping US manufacturers navigate the supply chain.

And Ms. Bavishi, we definitely support the new National Culvert Removal Replacement Restoration Grant Program that was part of the legislation just passed and signed into law by the President. NOAA scientists are salmon and habitat experts. And if confirmed, we want to know how you will help with NOAA expertise at the Department of Transportation to support this culvert grant program. So if you could help us with that.

So lots to talk about my colleagues did a great job of bringing up lots of issues, which I'm very happy about. You can see we have a very active committee, very large and active committee and lots to do. So. I'll start with you, Commissioner Rosenworcel. We talked about a lot of questions about the mapping, starting with my colleague, Senator Wicker down to the last person who asked questions, Senator Sinema. So I think the key thing I'm looking for here is current mapping available by the FCC. What flaws do you see in it?

Rosenworcel: What flaws do I see in the current maps? A whole lot. For more than a decade, the FCC practice has been to assume, if there was a single subscriber in a census block, service

was available throughout. So it systematically overstated service. And as a result, there are areas in the country where we just assumed service was, but people on the ground will tell you 'no, it's not here'. And so we haven't been always sending our support structures and our support systems to the right places as a result of those flawed maps. So instead of thinking about geographies through Census Blocks, we have to now think of it on a buildable by location by buildable location basis. Because if we don't actually go to that level of granularity or precision, we'll continue to miss communities that are going to need assistance, including from the most recent infrastructure legislation.

Cantwell: I'm glad you said that last phrase, because what word would you use for the current mapping?

Rosenworcel: Well, I recall that Senator Tester said that they stink. So maybe I'll just quote him.

Cantwell: Well, I definitely think they're ludicrous. And I think it led us to making some pretty erroneous decisions here. And that is that the mapping that Microsoft and others have done in a collaborative fashion that is down to the actual household level, show us that the majority of the problem we have with broadband is affordability.

Rosenworcel: It's a very big problem.

Cantwell: It's not, it's not access, access is a problem. But the majority of the problem—65 to 70 percent—is affordability. Not the challenges that we face, I want to deal with both. But I certainly don't want to shortchange the affordability equation in urban areas where people, at somewhere, we're seeing from the Microsoft mapping that around \$50,000 a year, you're not investing in broadband, because you can't afford it. So we can keep going on this ludicrous path here and acting like we're solving the broadband problem, or we can actually get down to business and solve the broadband problem. But if we spend \$65 billion, and in 10 years from now, we still have all these people in this unaffordability category.

The reason I mentioned, and I'm so passionate about it, is we also see a nexus here, we see these counties in the United States of America with a worse broadband service also having the biggest COVID problems. Why? Because maybe we couldn't communicate with people. We're not communicating effectively with people. And so I just think that the pandemic has showed us that we got to get serious about these maps. We got to get serious about urban broadband deficiencies. We got to get serious about the reason why people don't have broadband, and we can't move in some way of spending these dollars until we get serious about this, so I look forward to working with you on that, and appreciate your work.

I know, you've been to my state, I know you care about affordability. I know you care about the rural issues, and we care about that we care about that, too. We have a lot of—we're probably better than most states, we still have problems. But we're better than most states, but we got to solve this problem.

So, Mr. Bedoya, I'd like to turn to you. And then let me just I... My colleagues, you know, I served on Judiciary for two years and, and I learned that lots of college professors say things in their professional career that they definitely get questioned about when they come for positions here. And so I also believe that you have a right to express yourself. So I think your commitment to continue to serve on the FTC and work on in a bipartisan basis, I take your comments, wholeheartedly and hope that that is what you will be able to achieve.

Our colleagues brought up this issue of privacy many times in the discussion. And I think the issue for me is that when we think about where we've started, I should start for a second, let's go to the FTC authority actually on manipulation. We authored and wrote anti-manipulation language that we were successful in getting into the FERC. Getting into the CFTC. And getting into the FTC. We did that after the Enron crisis, because manipulation of electricity markets had caused havoc in my state. And people wanted us to pay and be the deep pockets for that.

And then we saw the same instances because we're an isolated oil market. Washington, Oregon, California often have the highest gas prices in the nation, because we are an isolated market—all of that supply coming from Alaska. So it's hard to impact it. But we did have instances when those markets, people, we believe were holding supply outside of the United States to just drive up costs. I literally had a provider of home heating oil testify before the Energy Committee that they thought that they had the ability to do this and then tried to blame it on the Jones Act. And I pointed out to them, they did not have the ability to hold supply outside the United States, just to artificially create a shortage and jack up prices. So I want to know, if you will use this FTC authority. I don't know what's happening in this instance, as it relates to supply but I definitely want it to be investigated by the FTC.

Bedoya: Senator absolutely, yes, I know, this is a priority for you. And I know that you worked hard to get that authority to the commission, and they issued rules, and you're eager for enforcement. And I can absolutely commit to do everything I can, if confirmed, to move that forward. Yes, ma'am.

Cantwell: Well, this is why I think you need an aggressive FTC. And because for many years, people told us that this was not an antitrust issue. We said, well, we don't think they're collaborating. We just think, you know, that there, that manipulation of supply or moving it outside the country, can create artificial shortages. And when you look at all the schemes that Enron did: Get Shorty, Fat Boy, they were all about moving supply somewhere else, so that they would create a shortage.

In fact, we had one instance where people said they had to shut down a plant. And then we actually saw the actual data from region 10, that they were still up and running, when they said they were shut down, which is why they said that there was a shortage. So look, I believe in aggressive enforcement here and appreciate that. Okay, back to privacy. So lots of my colleagues asked about privacy, and we have a lot of real world situations now that the information age has grown, in many ways, probably beyond what people could have even imagined 10 years ago. And so now we need a strong privacy law.

Chairwoman Rosenworcel brought up this dilemma about even the FCC's enforcement of privacy as it relates to these agreements on binding arbitration. And I want to ask you about that because to me, when you have victims of domestic violence, who really have stalkers, who are stalking them, and you have software that literally enables people to help stalk them, or when you say you were having kids sign up, and now you have kids signing up the binding arbitration agreement. What do you think we need to do here to make sure that we are standing up for the privacy rights of individuals and giving them protection besides binding arbitration that they may or may not have to pay for? So I don't think a privacy law saying, well, let's go into the go into the conference room with the Facebook lawyer that you're paying for, is the right solution for our privacy woes, and having a private right isn't about getting in the box with a Facebook lawyer that you may have to pay for on top of it. So could you give me your views on that?

Bedoya: Definitely, Senator, I think, you know, there is a place for arbitration in the American legal system where there's too sophisticated corporate entities, being able to resolve a complex matter quickly and expeditiously. I do not think that that is the place where consumer rights should be enforced. For the reasons you mentioned. You know, arbitration typically involves repeat players. And oftentimes, the players who use it the most, i.e. the companies, get to choose the forum or pay for the forum. And as a result, I think there's serious bias issues. I did some work of this on my time in the Senate, specifically to prevent this kind of thing occurring with respect to sexual assault. And I think it's critical that consumers have every right available to them and are able to defend that, generally speaking in court.

Cantwell: We saw this Ninth Circuit decision based on the driving technology, more of the courts said yes, like, if you're empowering people to monitor how fast they're doing this and driving, yes, it was an incentive, in this case for people to you know, drive even faster. And so to me, this is a question of if you have these technologies that basically are enabling stalking, and then basically they use them for stalking of domestic violence cases. And then you say, that's the limitation? You want them to go into a binding arbitration with a company? It hardly feels like a fair day in court for the American consumer, particularly women, who are so much the victims of these kinds of stalking attacks.

Chair Rosenworcel, do you want to comment on this further, since you brought this case up about the Supreme Court and what you think we need to do here?

Rosenworcel: Well, with respect to the wireless location, accuracy issues that you described, I know that the FCC has enforced against wireless carriers on these issues, I just want to say that I agree with the FTC nominee on those things, we need to address them. But with respect to consumers, you can't have two unequal parties sitting in a room trying to resolve something through binding arbitration. I think it puts consumers at an extraordinary disadvantage. That just can't be the best our legal system can produce.

Cantwell: Well, my sense is, there may be, you know, issues of just, “Hey, you didn't remove my name from your list in time.”

Rosenworcel: Yeah, you know, there's too much that goes on. Sometimes I when I think about the number of boxes I tick on an app or device or as I scroll through some information simply to get a service or to get shipping. I am, you know, you have that brief moment where you recognize you might be giving away a whole lot of rights. And it feels to me that even though I've been trained as a lawyer, I'm not reading it. I don't know how most of us are dealing with this on a day to day basis. But this is not a system that feels especially fair.

Cantwell: Well, I think it's definitely changed and the risk and the risk that is involved.

Rosenworcel: It puts the risk back on the consumer.

Cantwell: Yes, but I'm saying it's changed dramatically in the enabling of the technology and what it actually does. Mr. Bedoya, do you see a line here where somewhere, you know, along the harm or along the damage that is done? I mean, I also think of data breaching and the fact that data breach, you know, where your identity and financial wherewithal and lots of things can be ruined is there. Is there some way you think that we should try to change this? I heard your answer to the question of whether you might consider a rulemaking here. But what do you think, what do you think we should do in trying to address this issue?

Bedoya: Thank you for that question, Madam Chair. If we're talking about this issue of stalking apps, I think there's a there's a couple things, both targeted and slightly broader. One is relentless focus, to be honest with you. It is really a shame that this is still an issue. You know, 10 years later, back when I first started working on this, I do think the commission had a critical action recently on this, I'd love to see more of them. I'd love to see more work with organizations like the National Network to End Domestic Violence, Violence Free Minnesota, at the state level, and others.

More broadly, though, I think it's important to recognize that harms, we can try to remedy them after the fact. But part of preventing them, which I think is everyone's goal, is to make sure that the sensitive data that can be used to facilitate tragic things like cyber stalking and stalking apps, also there need to be rules for the road for and protections for, and for example, when it comes to geolocation, the ease with which this information can be collected, shared, bought, sold, breached, facilitates these kinds of harms. And so it's important to not just go after the targeted harm, but also understand the ecosystem that facilitates it and, and put rules of the road to prevent those harms from occurring in the first place.

Cantwell: Well, definitely want to prevent them from occurring in the first place, but what kind of rights should consumers expect if there has been major harm done to an individual?

Bedoya: Senator and, in my opinion, the right to the day in court to make sure that, that they have the ability to, to take their rights and defend them in court and, and ensure that privacy is

protected. Oftentimes, you know, law enforcers have a lot of things they have to worry about, and sometimes privacy harms don't go to the top of that list. And so I think that's critical, in my view.

Cantwell: Does the FCC have the ability to put out a new rule on this, Chair Rosenworcel?

Rosenworcel: I think I'd have to study with our general counsel's office and get back to you on that.

Cantwell: Okay. Would you do that for us for the record? Definitely appreciate an answer here. I do think that there are people who wish that all of these entities would be under the same rules. And so that's, you know, an issue as well. And as I said, I think there's some, a lot of my colleagues have been working on legislation for a long time in these areas of just good data, hygiene and good consumer, you know, information you should be giving to consumers. And then I think I think we're just negligent if we don't try to figure this out and get some rights for consumers, because I think you're not, you're not going to contain the continued growth of these activities, if you don't have some strong deterrence.

And, you know, we can see this in so many different aspects. I, you know, I truly believe the Information Age is a great time to be alive. But I also think that we have to figure out how to harness it and make it work for us and not work against us. And there are certainly some examples where it can work against us. And that's what we need to do our job up here with the agencies that that we are talking about.

Mr. Bedoya, I'll just end with this. I know you joined us remotely because you had someone in the family, someone in your household who tested positive and I hope your son is doing well. And just appreciate you participating today in the hearing.

I think that concludes unless we have any other witnesses. I mean, any other members who want to come and ask questions, but I don't believe so. At today's hearing, I want to ask all the nominees Chair Rosenworcel, Mr. Bedoya, Ms. Bavishi, Mr. Venkataraman, if confirmed, will you pledged to work collaboratively with this Committee and provide thorough and timely responses to our requests for information as we put together and address important policy issues, and appear before the committee when requested?

Rosenworcel: Yes.

Bavishi: Yes, absolutely.

Bedoya: Yes.

Venkataraman: Yes

Cantwell: Okay. Mr. Bedoya, that a yes?

Bedoya: That was a yes.

Cantwell: Okay. Senators will have until Monday, November 22 at noon to submit questions for the record to the committee and Senators will have until Monday the 22nd to submit questions for the record and witnesses will have one more week to respond to that.

So that concludes our hearing. Again, thank you. It's probably one of the longer hearings we have but certainly appreciate everyone's participation today. Thanks.