

Statement of Gigi B. Sohn
Nominee to Serve as Commissioner of the Federal Communications Commission

Before the
US Senate Committee on Commerce, Science and Transportation

February 9, 2022

Good morning, Chairwoman Cantwell, Ranking Member Wicker, and members of the Committee.

Before I start, I want to send wishes for a full and fast recovery to Senator Lujan. It's been an honor getting to know him during this process and I look forward to seeing him on this dais again.

I'd like to re-introduce myself before I address two matters that have been raised in recent weeks.

I've been a public interest lawyer for over 30 years, working towards one goal – ensuring that all Americans have access to affordable, open, and robust communications networks, be they broadcasting, cable or broadband. During that time, I have lined up on the same side, and other times in opposition, to every regulated industry. I'm an advocate for the public - it's what I do. If I'm confirmed I would be the first public interest advocate to sit on the FCC.

Yet unlike the numerous nominees for FCC seats that have worked for Commission regulatees, represented them as clients, or served on their boards, I have been subject to unrelenting, unfair, and outright false criticism and scrutiny. This is despite the fact that I've had over 250 organizations and policy experts and 350,000 citizens voice their support, including in letters to this Committee and in op-eds. Many are Republicans and people you'd never think in a million years would support me. For a fifth FCC Commissioner seat, not the Chair who controls the agenda, that's probably a record.

At the same time, I realize that this isn't all about me. It's about some wanting to stop the FCC from doing its important work ensuring that everyone in America has robust broadband regardless of who they are, what their income is or where they live, as mandated by the Bipartisan Infrastructure Law. It's about stopping the FCC from ensuring that the media is diverse and serves the needs of local communities. It's about stopping the FCC from ensuring that our networks are resilient when the next disaster hits so that the public stays connected and safe. And it's about stopping the work Congress, including all of you and your predecessors, have charged this important agency with doing. A deadlocked agency helps almost nobody, save for a few huge corporations. But most importantly, it hurts the American people who need the FCC to make hard decisions.

Now I'll address some of the questions that have been raised around the confidential Locast settlement agreement and my voluntary and temporary recusal from some matters involving retransmission consent and TV broadcast copyright.

First, the Locast settlement. As press reports have made clear, I have no financial liability stemming from the lawsuit and indeed, I never did from the day I joined the Sports Fans Coalition, NY (SFCNY) Board. This wasn't a settlement agreement that I negotiated – SFCNY negotiated it, and with the full and eager consent of the network plaintiffs, set the amount to be paid as \$700,000 plus SFCNY agreeing to turn over Locast's used equipment to them. Why didn't I mention this number in my response to Senator Wicker's questions for the record? Because the confidential settlement agreement barred me -- as well as the network plaintiffs and SFCNY -- from mentioning the terms of the agreement in writing. This was a fact that whoever leaked the agreement to the press conveniently omitted.

Also omitted was the fact that the enforceable term sheet setting forth the particulars of the settlement was signed on October 12, two weeks before I was nominated for this position. That term sheet is expressly referred to in the settlement agreement. On October 12, when the settlement between the networks and SFCNY was signed by their representatives, I had no idea whether or when I would be nominated.

I took very seriously my duty to keep the terms of the settlement agreement confidential. But others did not, and exploited my inability to defend myself. Now freed by the public disclosure of this information, despite a court order, confirming all of the terms of the settlement including the duty not to discuss them in the press, I'm here to answer the baseless rumors that have swirled around this issue.

Second, I'll address my voluntary recusal, which I undertook because of concerns raised at the December 1 hearing and QFRs by members of this Committee about my involvement with Locast. The recusal is narrowly tailored and tied to my personal participation in a 12-year-old Petition for Rulemaking the organization I represented filed seeking changes to the retransmission consent regime, a docket that remains open. There is precedent for such a voluntary recusal – in 1998, then-Chairman Kennard recused himself from a fairness doctrine-related docket when he discovered he had signed a pleading in that docket as an NAB intern. *See Radio Television News Directors Ass'n v. Federal Communications Commission*, 185 F.3d 872, 878 (DC Cir. 1999).

As experts have noted, my recusal is voluntary, temporary, extremely narrow and concerns business unlikely to come before the full FCC. But in no way does it open the door to every other industry seeking a recusal for every position I and Public Knowledge have ever advocated. Such a result would be perverse, and probably would prohibit *anyone* -- not just public interest advocates and academics – who has taken any public position on telecommunications and media policy from serving on the FCC.

A federal district court judge recently rejected a similar wide-ranging request in a case involving an effort to recuse a senior government official. He said:

It is natural that the President will select a candidate based on her past experiences and views, including on topics that are likely to come before the Commission during her tenure, and how that administrator will implement the Administration's priorities. Courts must tread carefully when reviewing cases in this area lest we "eviscerate the proper

evolution of policymaking were we to disqualify every administrator who has opinions on the correct course of his agency's future action.”

Federal Trade Commission v. Facebook, Memorandum Opinion in Civil Action No. 20-3590 at 43 (January 11, 2022).

I have and will continue to answer each and every one of your questions with complete honesty, and to the best of my knowledge. Thank you.