



NATIONAL FRATERNAL ORDER OF POLICE

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3 January 2023

The Honorable Maria E. Cantwell
Chairman
Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Ted Cruz
Ranking Member
Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Madam Chairman and Senator Cruz,

I am writing on behalf of the members of the Fraternal Order of Police to once again advise you of our strong opposition to the nomination of Gigi B. Sohn to serve as a Commissioner on the Federal Communications Commission (FCC). It is our understanding that the Administration is considering nominating her again and we would urge you to convey to the White House that the nominee does not have the support of a majority of the Senate.

As you know, the nominee was deadlocked in Committee in the last Congress and the Majority Leader did not bring the nomination to the floor because he did not believe there were enough votes to confirm her. We do not believe that the midterm election has changed that, and it has certainly not changed the FOP's priorities or our concerns about this nominee.

Public safety is the paramount responsibility of every elected official, and the FOP believes that because Ms. Sohn plays such an active role as a board member of the Electronic Frontier Foundation (EFF)—an organization which has extreme views on the use of certain law enforcement technologies—she could make it more difficult to protect our communities. We are particularly troubled by their, and by extension, her, forceful advocacy of end-to-end encryption and “user-only-access”—often referred to in the law enforcement world as “going dark.” New encryption methods for communications are causing Federal, State, and local law enforcement agencies to rapidly lose the capability to obtain information necessary to protect the public from crime and violence. Because service providers have embraced encryption technology that makes the encrypted data completely inaccessible—even to the providers themselves—law enforcement agencies are prevented from obtaining historically accessible information, making it extraordinarily more difficult to protect the public, investigate crime, or prevent imminent violence.

For years, the FOP and other law enforcement organizations have urged the Federal government to develop and adopt standards for carriers so that they can lawfully comply with law enforcement requests, especially when lives are on the line and time is of the

essence. Based on Ms. Sohn's stance on this issue, and her ongoing leadership role at the EFF, we are very concerned that she has never moderated her extreme views on this subject.

We have worked with three consecutive Administrations and numerous Federal law enforcement agencies, including the Federal Bureau of Investigation (FBI), to address this issue. Christopher Wray, Director of the FBI, testified before the House and Senate Homeland Security Committees in September 2021 at hearings entitled, "Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11" and devoted a part of his testimony to what the law enforcement community calls the need for "lawful access." He stated:

What we mean when we talk about lawful access is putting providers who manage encrypted data in a position to decrypt it and provide it to us in response to legal process. We are not asking for, and do not want, any "backdoor," that is, for encryption to be weakened or compromised so that it can be defeated from the outside by law enforcement or anyone else. Unfortunately, too much of the debate over lawful access has revolved around discussions of this "backdoor" straw man instead of what we really want and need.

Director Wray highlighted the need for lawful access in cases like the killing of three U.S. sailors at Naval Air Station Pensacola. Following the attack, the FBI was unable to access any information from the terrorist's phone and other devices for months because the service providers employed "user-only-access" technology and the phone used an app with end-to-end encryption. Despite lawful search warrants and the potential that additional attacks were imminent, it took the FBI months to retrieve that data from these devices.

Director Wray also noted that this is not just a Federal law enforcement problem, nor is it just a national problem. It is the policy of the United States that technology companies should have the means to comply with lawful orders or requests for information. In July 2019, the governments of the United States, the United Kingdom, Australia, New Zealand, and Canada issued a communique which states:

[T]ech companies should include mechanisms in the design of their encrypted products and services whereby governments, acting with appropriate legal authority, can gain access to data in a readable and usable format. Those companies should also embed the safety of their users in their system designs, enabling them to take action against illegal content.

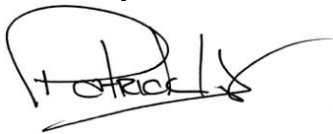
Technology companies have responsibilities when it comes to public safety, which includes cooperating with lawful and legitimate law enforcement orders, but the EFF has been the leader in the efforts to thwart lawful access to digital data and evidence. Based on the fact that Ms. Sohn remains an EFF board member, we have no confidence in her ability to objectively perform the duties of an FCC Commissioner.

We are also very troubled that the EFF has celebrated and lionized Edward J. Snowden, whom they characterize as a “whistleblower” and a patriot. The fact is that Mr. Snowden was entrusted with highly classified intelligence used to protect and defend the United States, and he chose to unlawfully share that data—putting American lives at risk and seriously damaging our national security. Mr. Snowden has been charged with three Federal felonies—including two counts of violating the Espionage Act. He is currently a wanted fugitive who is now a citizen of Russia. He has failed to condemn the unlawful invasion of Ukraine by the armed forces of Russia when the United States and much of the Western world is supporting the Ukrainian people with billions of dollars in material and weapons to help them defend against this illegal invasion. As far as we know, she has not distanced herself from those who believe this man to be a hero.

It is for these reasons that the FOP so strongly opposes this nominee. We ask you once again to convey to the White House that Ms. Sohn is a terrible choice to serve on the FCC and urge the President, as we have, to select someone else to be Commissioner.

On behalf of the more than 364,000 members of the Fraternal Order of Police, I thank you for considering our views on this nominee. If I can provide any additional information on this matter, please do not hesitate to contact me or Executive Director Jim Pasco in our Washington, D.C. office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Yoes', with a long horizontal flourish extending to the right.

Patrick Yoes
National President

cc: Members, Committee on Commerce, Science, and Transportation, United States Senate