

January 26, 2022

The Honorable Maria Cantwell
Chairperson
Senate Committee on Commerce,
Science, and Transportation
254 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Roger Wicker
Ranking Member
Senate Committee on Commerce,
Science, and Transportation
254 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Cantwell and Ranking Member Wicker:

We, the undersigned, represent a broad coalition of organizations **with strong opposition to the nomination of Gigi Sohn for FCC Commissioner due to her conflicts of interest, lack of candor and secret recusal agreements.**

Conflict of interest: Recent reports¹ from *Bloomberg Law* on her position with Locast² show that on October 27, 2021, **just one day after President Biden nominated her to serve as a Commissioner at the FCC, Sohn executed a settlement agreement between Locast and broadcasters—entities that she will regulate if confirmed by the Senate—that drastically reduced her organization’s financial liability from \$32 million to \$700,000.**³

Press reports widely discussed her potential nomination as early as the summer of 2021, well before the Biden’s October 26 announcement to nominate her to the FCC.⁴ Sohn knew the announcement was coming, and **Sohn knew that the broadcasters knew that she was being considered as the likely nominee to serve as one of their regulators at the exact time when the parties were negotiating the settlement agreement.**⁵ It is not possible that the parties could have completed their settlement negotiations free from any thought that Sohn would soon be serving as their lead regulator.

Sohn’s decision to execute the settlement agreement in this context raises a host of new ethical concerns and casts serious doubt on her qualifications to serve on the FCC. As a matter of good government, Sohn should never have been nominated while embroiled in litigation with the very entities she’d be charged to regulate at the FCC.

¹ Maria Curi, “Biden FCC Nominee Settles Case That Spurred GOP Senator’s Fight,” *Bloomberg*, (January 26, 2022)

<https://news.bloomberglaw.com/tech-and-telecom-law/fcc-nominees-settlement-undercuts-rationale-for-blocking-her>

² A service that was found to be illegally streaming broadcast content in violation of the Copyright Act

³ Ailan Evans, “Biden’s FCC Pick Gigi Sohn Cut Sweetheart Deal With Broadcasters One Day After Nomination,” *Daily Caller*, (January 26, 2022) <https://dailycaller.com/2022/01/26/gigi-sohn-fcc-locast-roger-wicker-joe-biden/>

⁴ Emily Birnbaum, “Speculation around FCC chair pick hits a new frenzy,” *Politico*, (August 5, 2021)

<https://www.politico.com/newsletters/morning-tech/2021/08/05/morning-tech-speculation-around-fcc-chair-pick-hits-a-new-frenzy-7>; Martin Barwyck, “Six Months in, Biden faces a tricky choice in deciding on a new FCC chairperson,” *TelecomTV*, (July 22, 2021) <https://www.telecomtv.com/content/access-evolution/six-months-in-biden-faces-a-tricky-choice-in-deciding-on-a-new-fcc-chairperson-42023/>

⁵ The Editorial Board, “Senate should take another look at Gigi Sohn,” *Washington Times*, (January 25, 2022)

https://www.washingtontimes.com/news/2022/jan/25/editorial-senate-should-take-another-look-at-gigi-/?utm_campaign=shareaholic&utm_medium=email_this&utm_source=email;

Lack of candor: The Bloomberg report also revealed that **Sohn appears to have misled the Senate Commerce Committee leaving Senators with the false impression that Locast paid the \$32 million in full and that Sohn herself played a minimal role in the settlement.**

Contrary to Sohn's representations, we now know that the \$32 million was never paid because Sohn executed a settlement agreement that greatly reduced the liability to \$700,000. Sohn chose not to share this information in response to repeated and detailed questions from lawmakers about the settlement.⁶ She refused to provide a copy of the settlement agreement, in spite of Senators requests, without ever asserting that she was legally prohibited from providing it. A copy of the settlement agreement was later provided to the Senate by a different entity. **Sohn's evasive answers to the Committee fall far short of the transparent and forthright responses normally expected of nominees.**

Secret negotiations: As these concerns put her nomination in jeopardy, Sohn is trying to sweep them under the rug. According to news reports, **Sohn is negotiating a secret deal with Senate Commerce Committee democrats and the broadcast industry to address her biases and conflicts of interest. The deal is rumored to include wide-ranging recusals from a large swath of media issues under the FCC's jurisdiction.**

While it's understandable that the broadcast industry would seek preemptive relief from a potentially hostile regulator, no such recusal deal could possibly address, on its own, the myriad ethical problems raised by Sohn's nomination. **Sohn's attempt to negotiate recusal without disclosing the parameters or circumstances to other members of the Committee, who have the responsibility to cast an informed vote, continues to demonstrate her lack of candor and transparency. Without publicity of the recusal deals, the likelihood of actual recusal drastically decreases.** The existence of these negotiations raises questions about what other policy areas under the FCC's jurisdiction that Sohn would need to recuse from given a history of incendiary attacks against various regulated entities.

We call on the Committee to hold a second hearing regarding new information on the Locast settlement and to make public the details of any recusal negotiations prior to holding a vote. This information is highly relevant to whether Sohn is fit to serve and worthy of Senate confirmation to the FCC, an agency with tremendous power over our economy and communications networks.

Regards,

Grover Norquist
President
Americans for Tax Reform

Phil Kerpen
President
American Commitment

Thomas Jones
Founder
American Accountability Foundation

Edward Longe
Policy Manager
American Consumer Institute

⁶ In response to a question for the record from Senator Wicker where he asked where the \$32 million came from, Sohn stated, "The settlement funds come from amounts collected to fund [Sports Fan Coalition New York] operations after SFCNY pays its vendors." She responded similarly to a question from Senator Blunt. These answers left the Committee under the impression that the \$32 million judgment had already been paid or would be paid in short order.

Jeffery Mazzella
President
Center for Individual Freedom

Ashley Baker
Director of Public Policy
Committee for Justice

Roslyn Layton
Co-Founder
China Tech Threat

Jessica Melugin
Director, Center for Technology and Innovation
Competitive Enterprise Institute

Matthrew Kandrach
President
Consumer Action for a Strong Economy

Katie McAuliffe
Executive Director
Digital Liberty

Adam Brandon
President
FreedomWorks

Heather R. Higgins
CEO

Independent Women's Voice

Andrew Langer
President
Institute for Liberty

Tom Giovanetti
President
Institute for Policy Innovation

Seton Motley
President
Less Government

Tom Hebert
Executive Director
Open Competition Center

James L. Martin
Founder/Chairman
60 Plus Association

Saulius "Saul" Anuzis
President
60 Plus Association

David Williams
President
Taxpayers Protection Alliance