

FEDERAL COMMUNICATIONS COMMISSION



Mignon L. Clyburn
Commissioner

February 25, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Representative Walden:

It was a pleasure to appear before the Subcommittee on Communications and Technology on December 12, 2013, to provide testimony relating to oversight of the Federal Communications Commission.

I appreciate the opportunity to answer the additional questions for the record posed by you and your colleagues, Representatives Latta; Waxman; Matsui; Lujan, and Rush. The responses are attached to this letter, and will be e-mailed to the Legislative Clerk. A hard copy will be mailed to the Clerk of the Committee on Energy and Commerce as directed.

Please feel free to contact me if you have any further questions.

Sincerely,

Mignon L. Clyburn

The Honorable Greg Walden

1. Chairman Upton and I sent a letter after the Commission announced it would make changes to the UHF discount and apply them retroactively to the date of the notice. Is it consistent with the APA to announce that you plan to apply yet unwritten rules retroactively? Could you explain how this comports with good administrative process?

Response:

The Commission sought comment on the UHF discount in the current Notice of Proposed Rulemaking (NPRM). This proceeding is pending, and there is not a final decision at this point.

2. The FCC has found on two previous occasions that an absolute ban on newspaper/broadcast cross-ownership is not necessary to serve the public interest and that, to the contrary, cross-ownership fosters local journalism without harming diversity or competition, a finding which was affirmed by a court of appeals. And, since these conclusions were reached, competition to newspapers has only continued to expand while the financial condition of the industry has deteriorated further. Against this backdrop, wouldn't it be exceedingly difficult for the FCC to justify a conclusion that changes remain unnecessary to the media ownership rules?

Response:

As required by Congress, the Commission is poised to review the current broadcast ownership rules. Given changes in the consumer market, and new developments in the media industry, a fresh look is warranted. I support a new examination of the suite of ownership rules, with a view toward making adjustments, as necessary, and as consistent with judicial precedent.

3. The newspaper/broadcast cross-ownership rule is the only one of the FCC's media ownership rules that has not been relaxed at all since its adoption, and all of the other FCC media rules allow at least some degree of common ownership. At a minimum, shouldn't the FCC relax the newspaper cross-ownership rule so that it allows at least as much flexibility as the other rules? Would you agree that it makes sense to relax the media ownership rules in view of increased competition in the content market?

Response:

It is especially appropriate for the Commission to review the newspaper / broadcast ownership rules in light of changed market conditions. I support a fresh review of each rule to ensure that we are continuing to act in the public interest.

The Honorable Bob Latta

1. Commissioner Clyburn, one of the FCC’s accomplishments you noted in your testimony before the subcommittee is the adoption of an Order to reform inmate calling services (ICS). During the hearing when asked about the costs that local jails will incur as a result of these rates changes for interstate calling services, you mentioned that providers in distress can apply for a waiver from those rates. Does this waiver exist for correctional facilities that have relied on funds generated by inmate use of ICS to implement standard security features into their calling systems, and that now, as a result of the rate change, allege that they do not have the means to afford sufficient security measures into their systems to ensure public safety? If so, please outline the waiver application process. If not, how would you propose that correctional facilities balance their unique public safety and facility security needs and budgetary constraints with these uniform interstate calling rates?

Response:

I appreciate the fact that, after 10 long years, the Commission finally responded to a petition filed by a courageous grandmother to address unreasonably high rates for families and friends to make telephone calls to a loved one in prison. The Commission took long overdue steps to provide relief to the millions of Americans who have borne the financial burden of unjust and unreasonable interstate inmate phone rates. The Commission’s Order adopted interim rate caps for interstate calls of \$0.21 a minute for debit calls and \$0.25 a minute for collect calls. These rates apply to interstate inmate calling services between the inmate calling provider and the consumers -- not the correctional facilities.

The Commission has a statutory duty to ensure that all carriers’ interstate rates are just and reasonable.¹ It also has an obligation to ensure that payphone rates, which include payphones in correctional institutions, are fair.² I prefer for the marketplace to ensure that rates are just and reasonable wherever possible. In the context of inmate calling services (ICS), however, the Commission found that “the marketplace alone has not ensured that interstate ICS rates are just and reasonable and they are fair to consumers, as well as providers.”³ The Commission concluded “that the rate reforms we begin in this Order are necessary to ensure [interstate ICS rates] are just and reasonable”⁴ and “necessary to implement section 276(b)(1)’s ‘fair compensation’ directive.”⁵ The Order focuses on ensuring that the rates the carriers charge consumers comply with the statute –

¹ See 47 U.S.C. § 201(b).

² See 47 U.S.C. § 276(b). “The Commission has previously found the term ‘fairly compensated’ permits a range of compensation rates that could be considered fair, but that the interests of both the payphone service providers and the parties paying the compensation must be taken into account.” *Inmate Calling Report and Order and FNPRM*, 28 FCC Rcd at 14115, para. 14; see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, 17 FCC Rcd 3248, 3257-58, para. 23 (2002) (*Inmate Calling Order on Remand and NPRM*).

³ *Inmate Calling Report and Order and FNPRM*, 28 FCC Rcd at 14131, para. 45.

⁴ *Id.* at 14131, para. 45.

⁵ *Id.* at 14131-32, para. 46.

it does not regulate the arrangements between inmate calling providers and correctional institutions.

As you note, the Commission provided the opportunity for a waiver to address any unique circumstances. It is important to recognize that the Commission's jurisdiction and rules apply to the carriers – not the correctional institutions. So, the entities that may seek a waiver are the inmate calling services providers. The standard for a waiver, as with all waivers of Commission rules, is “good cause.”⁶ The Commission stated that “the petitioner bears the burden of proof to show good cause exists to support the request” and identified factors to be considered in reviewing a waiver request.⁷ It further stated that inmate calling services providers “will have opportunities to seek waivers to the extent the framework adopted in this Order does not adequately address their legitimate costs of providing ICS.”⁸ The Commission noted that “petitions for waiver of the interim rate caps would account for extraordinary circumstances.”⁹ It delegated authority to the Wireline Competition Bureau to “request additional information necessary for its evaluation of waiver requests and to approve or deny all or part of requests for waiver of the interim rate caps adopted herein.”¹⁰

On February 11, 2014, the Wireline Competition Bureau granted a limited waiver of the interim rate cap to PayTel, an inmate calling provider that provides services to jails. The Bureau found that there was good cause to allow PayTel to charge up to \$0.46 per-minute for interstate call. As the PayTel examples highlights, if there are unique circumstances, the Commission will modify the rules as appropriate.

The Honorable Henry Waxman

1. In many markets, low power television stations (LPTVs) operating on Channel 6 developed new local services since the audio on these stations can be heard on 87.7 FM using the radio dial. In order to comply with the upcoming analog-to-digital television transition, some broadcasters have proposed combining digital LPTV signals with analog audio streams into one channel, using existing modulation. Please state your view in regards to this approach.

Response:

While these stations are licensed as television stations, they are functioning as radio stations. One of the key issues raised by their operation is the potential for

⁶ “Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” 47 C.F.R. § 1.3.

⁷ *Inmate Calling Report and Order and FNPRM*, 28 FCC Rcd at 14153, para. 82.

⁸ *Id.* at 14164, para. 105. The factors are “costs directly related to the provision of interstate ICS and ancillary services; demand levels and trends; a reasonable allocation of common costs shared with the providers’ non-inmate calling services; and general and administrative cost data.” *Id.* at 14153, para. 82.

⁹ *Id.* at 14153, para. 83.

¹⁰ *Id.* at 14154, para. 84.

interference with public broadcast stations. At least one of these broadcasters has proposed a novel alternative, which warrants our careful consideration.

The Honorable Doris Matsui

1. You have worked tirelessly to help bridge the nation’s digital divide. An estimated 100 million Americans do not subscribe to broadband at home due to a variety of reasons, including the cost of internet services.

Can you share with us some of your recommendations that Congress and the Administration can consider moving forward?

Response:

Broadband is no longer a luxury, but essential for employment, education, health care, civic engagement and to remain connected to family and friends. I am deeply concerned that approximately 100 million Americans do not subscribe to broadband today with affordability being a significant challenge for too many of these consumers. I support the Broadband Adoption Act of 2013 legislation you introduced to close the digital divide by expanding the Commission’s Lifeline program to support broadband in the home. The Act also proposes measures to eliminate waste, fraud and abuse and I applaud your leadership on this issue. The FCC has been conducting pilot programs for supporting broadband with Lifeline. I hope the Commission will learn lessons from these pilots that will help craft permanent rules to provide a means for low-income families to get connected via the Lifeline program.

The Honorable Ben Ray Lujan

1. Commissioners, I appreciate your work to extend new communications networks across the digital divide to rural and difficult-to-connect regions of our country. As many of you are aware, my district in New Mexico is home to many Native Americans. Tribal lands are amongst the most underserved—with only about 10% of all homes connected to broadband and some of the lowest rates of wireless communications in the country. The Commission’s recent reforms of the Universal Service Fund acknowledged this need by including a “tribal coefficient” to increase capital expenditures and operating expenses on tribal lands. I plan on introducing legislation to make the FCC’s Office of Native Affairs and Policy, which provided invaluable advocacy in the adoption of the tribal coefficient, into a permanent agency and ensure that it reports directly to the Chairman instead of to another office or Bureau. My legislation has the support of the National Tribal Telecommunications Association, which is comprised of eleven Tribally-owned communications companies from around the country. Do you believe that the telecommunications needs of Native Americans are being adequately addressed by the FCC’s current structure? How do you believe that ONAP could be better empowered to advocate on behalf of Tribal Americans?

Response:

The FCC's Office of Native Affairs and Policy (ONAP) has been an important voice both inside and outside of the agency that focuses on the unique needs of Tribal areas. One consequence of the sequester was a reduction in travel for the entire agency, including ONAP. I believe that travel is necessary for our agency, generally, and ONAP in particular, to be successful. While Acting Chairwoman, I testified before the Senate Appropriations Committee and advocated for increased funding for the agency so that ONAP could travel for mission-critical events.

I also agree that it is important to connect all Americans, including those on Tribal lands, to modern communications networks capable of providing broadband-enabled services. In previous Commission Orders, including universal service reform, I advocated for a stronger Tribal engagement, as I have seen first-hand the challenges of providing service on Tribal lands. The Commission adopted a separate Tribal Mobility Fund to account for these unique needs. The Tribal Mobility Fund auction is scheduled to occur on Tuesday, February 25, 2014, and I hope that it is successful and provides an infusion of support to build infrastructure on Tribal lands.

In addition to reforms to support infrastructure deployment on Tribal lands, I have been a proponent of reforming the FCC's Lifeline program to support broadband. Low-income consumers living on Tribal lands may not be able to afford broadband even where the service is available. This is one reason why I advocated for a Lifeline broadband pilot program to include at least one Tribal area. I look forward to the results of these efforts and will continue to advocate that the FCC permanently reform Lifeline to support broadband.

2. While I appreciate the Commission's efforts to include the Tribal Coefficient in its calculation of USF funds, I believe that more is needed in order to connect our tribal lands to modern communications networks. This coefficient must be properly calculated to recognize the full cost impact of providing service on Tribal lands. In fact, the coefficient's impact is substantially less than a similar coefficient that is provided to measure the cost of providing service on National Park Service lands. Do you believe that the Coefficient is adequate to connect Tribal lands?

Response:

The Chairman has announced plans to eliminate the existing regressions and benchmarks for FCC's high cost loop support (HCLS) universal service support. As we await the details, I expect the plan will address concerns about the Tribal Coefficient as well as other coefficients with the HCLS benchmarks. It is important to connect all Americans, including those on Tribal lands, to modern communications networks capable of providing broadband-enabled services. I

believe that the FCC has a duty to close the digital divide and ensure that all Americans are connected to broadband.

3. The Navajo Nation, which is partially in my district, has some of the highest rates of poverty and lowest rates of wireless broadband access in the United States. NTUA Wireless, LLC, which is majority owned by the Navajo Nation, has been seeking an ETC designation in order to access universal service fund support to help make telecommunications service available to more residents of the Navajo Nation. This designation would enable NTUA to make additional investments into infrastructure, which would in turn spur job growth and economic development. NTUA Wireless initially petitioned the FCC for an ETC designation on March 3, 2011 and I have repeatedly joined with New Mexico's Senators to support this petition and urge its resolution. To date, I am not aware of a single filing in opposition to this application, yet the FCC has not acted upon it. What is the current status of the NTUA application and when should the Navajo Nation expect the matter to be resolved?

Response:

On February 18, 2014, the Wireline Competition Bureau and the Wireless Telecommunications Bureau released an order that conditionally designated NTUA Wireless as an eligible telecommunications carrier (ETC) for those areas on the Navajo Nation. I am pleased that the Order was approved as it was something I encouraged the staff to prioritize while I was serving as Acting Chairwoman.

4. The FCC was given significant responsibilities in meeting the challenges of Positive Train Control deployment. Nevertheless, it is my understanding that the FCC was just notified this past May that railroads will need to install over 20,000 new antennas along their tracks. I'm shocked that the railroads would wait 5 years after passage of the Rail Safety Improvement Act of 2008 to notify the FCC of this fact. As I'm sure you're aware, railroads in New Mexico cross Tribal lands and have the potential to affect a number of religious and cultural sites in my home state. Could you please explain the steps that the Commission is taking to not only expedite the deployment of positive train control, but also ensure that the needs of Tribal Nations are met?

Response:

Section 106 of the National Historic Preservation Act (NHPA) requires review of antenna structures to be used in conjunction with a Federal Communications Commission license. The Commission staff intends to comply with statutory and regulatory obligations with regard to the proper review of these antenna structures. That review process requires consultation with Tribal governments. As Acting Chairwoman, I directed the staff to work towards the development of a draft program comment. This is not an exemption from the Section 106 process.

A draft program comment could, however, expedite review of these poles on railroad rights of way. On January 29, 2014, the Wireless Telecommunications Bureau released the program comment to seek input from the public. The ACHP will then have 45 days to issue a Program Comment, unless it requests additional documentation, declines to comment, or obtains the Commission's consent to extend this period of time.

5. As you know, Section 254 of the Communications Act includes a statutory and laudable goal of providing low-income families access to telecommunications services. As part of this mandate, the FCC has managed the Lifeline program that provides discounted mobile telephone service to eligible consumers. The FCC has recently taken action to strengthen and preserve the Lifeline program by working to confirm that consumers may only receive one phone per household, certify that they are eligible for the service and agree to recertify their eligibility each year. To date these steps have proven fruitful, saving an estimated \$2 billion to the program and resulting in the collection of \$90 million in fines from enforcement actions over the past 3 months. How would you evaluate the effectiveness of the recent FCC reforms to the Lifeline program? What work remains to be done to ensure that it continues supporting the low income Americans who depend upon it?

Response:

The FCC's Lifeline program is a true lifeline for millions of low-income Americans. Staying connected is essential for employment, emergencies and being able to reach friends and family. As you note, the Commission took corrective action once it became clear that sufficient protections were not in place in the Lifeline program. The tough, comprehensive reforms unanimously adopted by the Commission last year to combat waste, fraud and abuse already have resulted in hundreds of millions of dollars in savings to the Universal Service Fund. The Lifeline program is currently on track to save approximately \$2 billion by the end of 2014. The Commission also remains vigilant on enforcement and, as you recognize, has proposed \$90 million in fines for violations of the Lifeline rules. The first decisive enforcement action against Lifeline providers occurred while I was Acting Chairwoman.

While the Commission's 2012 reforms to the Lifeline program have made significant progress, we recognize that our work is not complete. I am continuing to monitor the impact of its reforms and look forward to working with the Chairman and my colleagues to evaluate what additional measures are appropriate to ensure the integrity of the Lifeline program. To preserve this vital program, the Commission must ensure that it meets the highest standards of integrity. I continue to advocate that the FCC's Lifeline program should be reformed to support broadband. The FCC has reformed the high cost universal service program to support broadband, has revamped the rural health care program and is in the process of modernizing the schools and library or E-rate program. The

Lifeline program also needs to be reformed to reflect the modern era of broadband and I look forward to working with Chairman Wheeler to do so.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President’s June 2013 memorandum — Expanding America’s Leadership in Wireless Innovation — calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance.”

Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

Response:

In recent years, consumer demand for mobile broadband services has skyrocketed. In order to meet this demand, our Nation should explore spectrum management policies that could promote more efficient use of spectrum by all relevant stakeholders.

7. The President’s June 2013 memorandum — Expanding America’s Leadership in Wireless Innovation — also calls for the FCC in consultation with NTIA, to: “identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users.” I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President’s call for “reasonable expectations.” Can you explain how you interpret this from the Commission’s

perspective, and in this particular case, would you agree “reasonable expectations” for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

Response:

Intelligent Transportation Systems, such as the Dedicated Short Range Communications Systems (DSRC) for vehicle-to-vehicle technology, hold licenses in 5850-5925 MHz band. That band also includes Department of Defense radars and Amateur Radio Service. We understand that an extensive amount of research and investment has gone into developing the DSRC, and in evaluating the 5 GHz band for viable sharing scenarios. A considerable amount of work remains to examine the compatibility between unlicensed devices and these incumbent uses of this band. We are hopeful that all parties will work together to find technical solutions that will permit unlicensed operations in this band to coexist with DSRC and other systems.

8. I appreciated Mr. Pai’s comments on 5 Ghz. He hits the nail on the head talking about the benefits that can come from maximizing unlicensed use in those bands, and the opportunities it presents consumers. It’s important that a technically sound outcome on whether sharing can be achieved with DSCR and Wi-Fi is reached. Is it your understanding that all parties with interest in that band are working together to explore all sharing opportunities and reach a consensus based on technical findings? Is there more the Commission can be doing to facilitate that work?

Response:

The Nation’s demand for unlicensed services continues to increase dramatically, and we need more spectrum to support these services. The 2.4 GHz band, which has been so critical to the success of Wi-Fi and other unlicensed technologies, is increasingly congested particularly in major cities. Densely populated centers are the most expensive geographic areas to deploy licensed networks. For that reason, earlier this year the Commission issued a Notice of Proposed Rulemaking that proposes to make up to an additional 195 megahertz of spectrum in the 5 GHz Band available for unlicensed services. A number of technical issues must be resolved, which requires coordination with NTIA to examine the impact these proposed rules may have on federal users in the 5 GHz band, before final rules can be adopted. The Commission staff is moving quickly to resolve these issue. The sooner we solve these issues, the sooner American innovation can show leadership in developing the 5 GHz band for unlicensed services.

The Honorable Bobby Rush

1. Section 257 of the Communications Act requires the Commission to promote diverse ownership of the airwaves, particularly ownership by entrepreneurs and small businesses (including those owned by women and minorities) by taking regulatory action to *identify and eliminate* market entry barriers in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications or information services. Under the statute, the Commission is also directed to *eliminate* statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity. These efforts are to be memorialized by the Commission in a report that it is to prepare and submit to Congress every three years.

Recently, under Chairman Wheeler’s direction the FCC decided to hold off on adopting and to reassess certain broadcast-ownership NPRM proposals that could foreseeably undermine Section 257 and decrease already-anemic and abysmally low levels of diversity in ownership of communications licenses and facilities.

What steps should the Commission take going forward to ensure that the statutory goals of Section 257 are met and to increase already-abysmally low levels of female and minority ownership?

Response:

The Commission is required to examine and eliminate market barriers to entry for entrepreneurs and other small business entities. This remains a perennial challenge, yet the Office of Communications Business Opportunities (OCBO) supports a number of activities to address this mandate. Among other things, OCBO conducts a series of conferences, workshops and meetings designed to provide information to relevant stakeholders on a range of strategies to assist small businesses to participate more fully in the communications sector. The Commission also is guided by an Advisory Committee on Diversity in the Digital Age, which has put forth recommendations on economic opportunities and diversity initiatives in the wireless and broadcast industries. The Commission’s Declaratory Ruling clarifying foreign investment in license transfers conceivably clears the way for increased capital for minority and women entrepreneurs in the broadcast space.

- **In light of existing market trends and forces attendant to upcoming spectrum auctions, is it reasonable to anticipate further diminution in diverse ownership of broadcasting licenses and cable systems?**
 - **If so, what should the Commission be doing to offset that diminution in ownership share?**

Response:

It is difficult to predict the exact impact of upcoming spectrum auctions on the diversity of ownership given the voluntary nature of the incentive auction, but it is an issue that must be kept at the forefront. It is possible that the channel sharing and other opportunities presented in the incentive auction could help bolster existing minority and female owners economically, while allowing them to continue broadcasting over the air. In addition, diversity issues also are being examined as part of the Commission's ongoing broadcast ownership rule review.

- **When will the Commission be prepared to release its next Section 257 Report?**

Response:

I am sure the Commission is making plans to release the next Section 257 Report sometime during 2014.

2. In prior testimony before our subcommittee, it has been stated that added regulations on broadcasters “stem from what some have characterized as a ‘social contract’ between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers.” (see Testimony of Edward L. Munson, Jr., C&T Subcommittee Hearing, *Innovation versus Regulation in the Video Marketplace* 1)(9/11/2013)

Many of these American broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent of all broadcast-only homes.

Notwithstanding these considerable percentages, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- **Do you concur or disagree with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?**
- **Other than, or in addition to the reinstatement of minority tax certificates what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves?**

Response:

I agree that minority TV broadcast and cable system owners can be just as responsive to the needs of their minority viewers and audiences as others. All broadcasters are required to meet certain public interest obligations by providing programming that is responsive to the needs of their communities.

Congress has a unique role to play with respect to establishing programs and opportunities for all Americans to receive information and news relevant to their communities. We stand ready to implement the legislative mandates which would achieve these goals.

3. Federal law mandates that railroads install a safety technology known as positive train control by December 2015. This technology will require the installation of more than 20,000 antenna poles to ensure communication among railroad locomotives, computer servers and GPS devices.

- **Is it necessary to submit these short antenna poles to the same level of agency scrutiny and tribal review under the National Historic Preservation Act, as, for instance, much taller cell towers?**
- **Would you agree many of these smaller poles located on railroad rights-of-way where the property has been disturbed for many decades (or longer) could be exempted from the review process?**

Response:

Section 106 of the National Historic Preservation Act (NHPA) requires review of antenna structures to be used in conjunction with a Federal Communications Commission license. Railroad rights-of-way are not currently exempt from Section 106 review. A wholesale exemption of PTC infrastructure from NHPA review would require a lengthy process involving negotiation and consultation with the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers, and government-to-government consultation with Tribal Nations.

During my tenure as Acting Chairwoman, I directed the staff to work towards the development of a draft program comment. This is not an exemption from the Section 106 process. A draft program comment could, however, expedite review of these poles on railroad rights of way. On January 29, 2014, the Wireless Telecommunications Bureau released the program comment to seek input from the public. The ACHP will then have 45 days to issue a Program Comment, unless it requests additional documentation, declines to comment, or obtains the Commission's consent to extend this period of time.