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Congress of the United States

House of Representatives

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February 11, 2014

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner O'Rielly:

Thank you for appearing before the Subcommittee on Communications and Technology on December 12, 2013, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on February 25, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Attachment —Additional Questions for the Record

The Honorable Greg Walden

1. 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 changes remain unnecessary to the media ownership rules?

2. 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?

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.

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?

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?

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?

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?

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?

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?

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?

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?

<u>The Honorable Bobby Rush</u>

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

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 reinstitution 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?

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?