February 25, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
United States House of Representatives
2182 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

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

Attached, please find my answers to the questions submitted for the record.

Sincerely,

Ajit Pai
Commissioner
Federal Communications Commission

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

Attachment

Attachment —Additional Questions for the Record

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?

ANSWER: When the FCC proposed to eliminate the UHF discount, it stated its intent to grandfather only those applications pending when the Notice of Proposed Rulemaking was adopted. As I made clear in my dissenting statement, I do not believe that this decision comported with good administrative process. The UHF discount remains the law of the land today, and the FCC should treat it that way until such time as it is actually removed from the Code of Federal Regulations. Otherwise, the rest of the rulemaking process would be merely an empty formality.

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 changes remain unnecessary to the media ownership rules?

ANSWER: Yes, I believe that it would be impossible for the FCC to justify the conclusion that it is unnecessary to change the media ownership rules. In particular, I believe, like many former Democratic and Republican FCC Chairmen, that it is time to repeal the newspaper-broadcast cross-ownership rule. Given the financial state of the newspaper industry these days, we should be thanking anyone that wants to run a newspaper, not subjecting them to antiquated regulatory burdens. Additionally, there is no evidence in the record whatsoever to support other outdated restrictions, such as the radio/television cross-ownership rule.

3. The newspaper/broadcast cross-ownership rule is the only one of the FCC¹s 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?

ANSWER: Yes, I believe that it makes sense to relax the media ownership rules in light of increased competition in the content market. And as stated above, I support repealing the newspaper-broadcast cross-ownership rule (among others). That rule dates back to 1975, and the media marketplace is now far more crowded and diverse than it was thirty-nine years ago. It is absurd in this day and age that there cannot be common ownership of a newspaper and a radio station in the same market.

The Honorable Mike Pompeo

1. Commissioner Pai, you have been rather vocal supporting attempts to modify media ownership rules. In particular, you have favored a relaxation of the cross-ownership ban. However, some recent drafts on the issue have included attempts to count shared-services agreements between broadcast stations toward ownership limits. For example, in our home state of Kansas, an agreement between an Entravision and Univision station in Wichita enabled the introduction of the only Spanish-language local newscast in the market. Can you elaborate on the relaxation of the cross-ownership ban and the importance of shared-services agreements?

ANSWER: Given the realities of the modern media marketplace, I believe that we should relax or eliminate many of our ownership rules. The Internet is having a dramatic impact on television broadcasters. The competition that they face for viewers and advertisers is fiercer than it has even been. This demands fundamental changes in their business models. The days when Americans' home video options were limited to a few broadcast television channels are long gone. Our regulations must reflect that reality.

As broadcasters' share of the advertising market has shrunk in the digital age, television stations must be able to enter into innovative arrangements in order to operate efficiently. This is particularly true in smaller markets where advertising revenues are far from plentiful. JSAs and SSAs, for example, allow stations to save costs and to provide the services that we should want television broadcasters to offer. As you have noted, in our home state of Kansas, a JSA between two Wichita stations enabled the Entravision station, a Univision affiliate, to introduce the only Spanish-language local news in Kansas. A representative of Entravision recently told me that it will have to stop offering this Spanish-language local news if it has to terminate its JSA. Across the border in Joplin, Missouri, a JSA between Nexstar and Mission Broadcasting not only led to expanded news programming in that market but also nearly $3.5 million in capital investment. Some of that money was spent upgrading the stations' Doppler Radio system, which probably saved lives when a devastating tornado destroyed much of Joplin in 2011.

2. One way that that the FCC deals with eliminating regulations when changing market conditions warrant is through the forbearance process which today can be used to eliminate rules that no longer make sense given competitive market conditions. Commissioner Pai, you mentioned this issue in your testimony. Can you expand further on how this could work and its possible benefits?

ANSWER: Currently, section 10 of the Communications Act allows the Commission to "forbear from applying any regulation or provision of the [Communications] Act to a telecommunications carrier or telecommunications service, or a class of telecommunications carriers or services." Over the years, forbearance has allowed the Commission to remove outdated regulatory burdens from telecommunications carriers, which in turn has encouraged infrastructure investment and broadband deployment. But we can't take these same steps with respect to laws and regulations aimed at multichannel video programming distributors (MVPDs)—even though those laws and regulations contemplate an uncompetitive marketplace that no longer exists.

This dichotomy no longer makes sense. Permitting forbearance for voice regulation but not for video regulation is an anachronism, for the video industry is undergoing the same transformation that we are witnessing in the telecommunications sector. Technology is turning voice *and* video into applications transmitted over the Internet. And companies that once were dominant video providers face intense "intermodal" competition as we move to an all-IP world (for instance, cable companies now face competition from telephone, direct broadcast satellite, and over-the-top Internet-based companies). That's why I believe that the FCC should have the authority to relieve MVPDs from obsolete regulations as we currently have for telecommunications carriers. So long as the FCC determined that enforcement of the regulation was no longer necessary to protect competition or promote the public interest, it could forbear from enforcing that regulation. This would reduce regulatory burdens on companies and free up capital that they could pour into next-generation service and infrastructure investments.

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.

ANSWER: I would need to learn more about this proposal before offering a firm view. As a general matter, however, I believe that the Commission should be open to innovative ideas for preserving low power television stations and therefore am interested in studying this proposal more closely.

2. In your testimony at the hearing, you cited the FCC's 2013 Local Telephone Competition Report stating that "99.6 percent of Americans can choose from at least three wireline competitors and 92 percent can choose from 10 or more." However, the Local Competition Report goes on to state: "However, because providers may not offer service across an entire ZIP Code and because different providers may target different customer segments in areas where they provide service, we cannot conclude that the number of providers identified as delivering wireline service within a ZIP Code represents the number of options available to any specific customer within that ZIP Code. We further note that these data on the number of providers in a ZIP Code do not indicate whether a particular provider is offering service solely over its own last-mile facilities or is using the facilities of another carrier or entity." Do you agree that zip code data may not adequately capture the number of actual choices available to consumers? And do you agree that policy makers should consider who controls access to the last-mile facilities when analyzing competition?

ANSWER: I agree that the 2013 Local Telephone Competition Report may not completely capture the number of actual choices available to consumers. The use of zip codes is one component of the problem. Another is that consumers are increasingly substituting wireless services for wired services, and competition among both postpaid and prepaid wireless operators is rampant. As such, the Local Telephone Competition Report may in fact consistently understate the number of actual choices to consumers for substitutable services.

I also agree that investments in last-mile facilities are a relevant factor in analyzing competition. That is why, during my time at the Commission, I have consistently supported removing regulatory barriers to infrastructure investment.

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?

ANSWER: In my two years as a Commissioner, I have been able to engage directly and forthrightly with the Office of Native Affairs and Policy whenever needed, and I believe the staff of that office is working hard to address the telecommunications needs of Native Americans. At this time, I do not have a firm view as to whether the Office of Native Affairs and Policy would be more effective or less effective were it to be taken out of the Consumer and Governmental Affairs Bureau.

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?

ANSWER: The Tribal coefficient is one among several coefficients used by the FCC's Wireline Competition Bureau to calculate quantile regression analysis (QRA) benchmarks for rate-of-return carriers serving high-cost lands. I do not believe that the QRA benchmarks, even with the Tribal coefficient, were an adequate means of connecting Tribal lands. As such, I was pleased that Chairman Wheeler recognized at this hearing that the QRA benchmarks have not served rural America—including Tribal lands—well, and that we would be reconsidering their application soon.

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?

ANSWER: I understand that the Chief of the Wireline Competition Bureau and the Acting Chief of the Wireless Telecommunications Bureau granted NTUA's application on February 18, 2014.

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?

ANSWER: The Commission is taking all required steps under the National Historic Preservation Act and other statutes to ensure that the needs of Tribal Nations are met and is working diligently to conduct the consultation process in a manner that efficiently addresses the daunting amount of wireless infrastructure that must be deployed to meet the needs of Positive Train Control (PTC).

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?

ANSWER: I support the FCC's recent actions to guard the Lifeline program against the waste, fraud, and abuse that has skyrocketed over the past four years. Recently, the National Lifeline Accountability Database went live. It will be rolled out on a state-by-state basis over the coming months. I hope the deployment of that system—along with our recent enforcement actions against Lifeline providers that benefited from intra-company duplicates—will further reduce the problems in that program, but I am willing to take further steps to reform the program if necessary.

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?

<u>ANSWER</u>: In order to foster innovation and ease Wi-Fi congestion, I support the Commission's efforts to make another 195 MHz of spectrum available in the 5 GHz band.

Moreover, I have urged the FCC to move forward with its 5 GHz proceeding in stages, and I continue to believe that is the prudent path. For example, the Commission should move promptly to modify the service rules for the U-NII-1 band. By raising the power limits on the U-NII-1 band and allowing for outdoor use, we can make this band attractive for commercial Wi-Fi while safeguarding incumbent users. Given the growing congestion in the 2.4 GHz band (which consumers commonly rely upon for Wi-Fi access), we should not let a few difficult issues involving the 5 GHz band delay us from making progress on the easier ones.

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?

<u>ANSWER</u>: Opening up this spectrum will not be without its challenges, but I believe that we will ultimately find solutions that adequately protect incumbent users. By conducting critical, realistic analysis of these incumbent services and their needs, I am optimistic that

technology can be developed and deployed in such a way that the significant potential of this band can be realized for a great numbers of consumers.

8. I appreciated your comments on 5 Ghz. You hit the nail on the head in 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?

ANSWER: Thank you for your support of my views on the opportunities presented in the 5 GHz band. As I mentioned above, I have urged the FCC to move forward with its 5 GHz proceeding in stages, and I continue to believe that is the prudent path. We have not yet finished the hard work of reaching consensus on the upper 5 GHz band. However, I am optimistic that a technical solution can be developed that will allow both Wi-Fi and DSCR to flourish.

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?

ANSWER: The biggest obstacle to minority ownership in the broadcast industry is the lack of access to capital. That is why I believe that the Commission should adopt an incubator program to promote diverse new entrants into the broadcasting industry. That is also why I supported the FCC's recent action to relax restrictions on foreign investment. The Minority Media and Telecommunications Council and 30 other national minority and civil rights organizations told us that permitting additional foreign investment in the broadcasting industry would be "one of the most significant steps the Commission could take" "[t]o reverse the decline in minority broadcast ownership." I agree. With an expanded ability to access capital from abroad, minority entrepreneurs will have a better chance of being able to enter into the broadcast industry or expand existing businesses. I believe that the Commission should move forward promptly to approve on a case-by-case basis foreign investment that is in the public interest.

- 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?

ANSWER: If the Commission does not make the right policy decisions, then I believe that we will see this trend continue. For example, I believe that restricting the ability of broadcast stations to enter into or maintain JSAs and SSAs will harm women and minority-owned stations that currently benefit from these arrangements. For example, WLOO is a Vicksburg, Mississippi television station that is owned and operated by Tougaloo College, a historically African-American college founded in 1869. Tougaloo College has entered into a JSA with a television station in Jackson, Mississippi and has told the Commission that "without the JSA, we would not be able to operate the station as effectively as we do. In our experience, a JSA can be vital to allowing new, diverse entrants into the television business to provide services to the community."

- If so, what should the Commission be doing to offset that diminution in ownership share?

<u>ANSWER</u>: I believe that the Commission should implement an incubator program to encourage new entrants into the broadcast industry and increase ownership diversity. I also believe that the Commission should take concrete steps to revitalize the AM radio band. This is important because most minority-owned radio stations are in the AM band.

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

<u>ANSWER</u>: The Chairman's Office has not circulated a draft of the next Section 257 report, and I am unaware of the Chairman's schedule for doing so.

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." (<u>see</u> 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?

<u>ANSWER</u>: There is every reason to believe that a minority- or female-owned television or cable property can be just as responsive to the needs of its viewers as a station owned by any other party. In fact, unprecedented competition in the video marketplace means all broadcast and cable system owners must be as responsive as possible to the needs of their audiences, or those audiences will seek out more responsive programming or services from a competitor.

- 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?

<u>ANSWER</u>: As stated above, I believe that the Commission should implement an incubator program to encourage new entrants into the broadcast industry and increase ownership diversity. I also believe that the Commission should take concrete steps to revitalize the AM radio band because most minority-owned radio stations are in the AM band and much foreign-language programming is broadcast on the AM band.

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?

<u>ANSWER</u>: It is my understanding that the NHPA does not distinguish among the types of towers that require consultation, but that as a result of the consultation process, agreements may be reached that focus the parties' attention on a subset of the infrastructure necessary to implement PTC.

- 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?

<u>ANSWER</u>: Although I have not yet had the opportunity to review such a proposal, I support taking any steps available within the scope of our authority to streamline the review process so that PTC can be implemented on schedule.