

February 28, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Thank you for the opportunity to testify before the Subcommittee on Communications and Technology on December 12, 2013, at the hearing entitled, "Oversight of the Federal Communications Commission". In response to your letter on February 12, 2014, please find attached my responses to additional questions for the record. If you have further questions, please don't hesitate to contact our office at (202)418-2401.

Sincerely,

Jessica Rosenworcel

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?

The FCC is required by law to determine whether or not its media ownership rules are “necessary in the public interest as the result of competition.” Furthermore, the agency is required to repeal or modify any rules it determines are “no longer in the public interest.” As a general matter, I believe this review must be driven factually. In addition, I believe our next review must respond to the issues raised in the last court remand involving prior FCC action on this issue, *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011). Based on public statements from Chairman Wheeler, I anticipate that the FCC will take up this review in the near future. I also anticipate that in the record that develops in response to this review there will be a robust discussion regarding a wide range of issues—including the current state of the newspaper/broadcast cross-ownership rule.

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?

Under the law, the FCC must review its media ownership rules on a periodic basis. I am committed to making decisions on the basis of the factual record that develops in our upcoming review.

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.

Low power television stations operating on Channel 6 are licensed by the FCC as television stations, not radio stations. As a result, a hybrid digital video signal and analog audio signal may pose some legal complexities, as our existing allocation and licensing systems are

designed so that low power television stations provide video services. More importantly, the combination of these two services may result in interference. When the FCC last reviewed an application from a low power television station seeking to provide a hybrid analog-digital signal in 2012, the agency's Media Bureau dismissed the application, concluding that it did not comply with existing rules regarding transmission standards and therefore could cause impermissible interference. However, should another entity submit another application regarding this kind of hybrid service, the agency should review any new proposal on its own terms.

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?

Telecommunications deployment in Indian country for both basic and advanced services lags behind the rest of the country. This is a troubling and persistent problem that requires attention. The FCC's Office of Native Affairs and Policy has been an invaluable resource to the agency in its efforts to expand broadband access to all Americans. I fully support the efforts of this office. I also would support changes to strengthen the office. I would note in particular that traveling to Indian country is costly—but essential. I hope that if there is pressure on the FCC's travel budget we do not lose sight of the value of direct contact—outside of Washington—with our colleagues from tribal communities.

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?

More than two years ago, the FCC took historic steps to update its high-cost universal service fund. Though this predated my arrival at the agency, I appreciate the work that went into this process, including efforts to bridge the digital divide on Tribal lands. This series of reforms

included the “Tribal Coefficient,” which attempts to account for the exceptionally high costs of serving Tribal lands. The FCC also put in place a Tribal Mobility Fund, which used a reverse auction mechanism to award additional support for the deployment of mobile services. These are good first steps. But going forward, I believe we need to continue to evaluate the effectiveness of these reforms and make adjustments to improve service, as needed.

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?

On February 18, 2014, the FCC released a decision from the Wireline Competition Bureau (DA 14-200) that conditionally designates NTUA Wireless as an eligible telecommunications carrier (ETC).

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?

The Rail Safety Improvement Act of 2008 requires the deployment of Positive Train Control systems on major freight, passenger, and commuter rail systems by the end of 2015. To meet this deadline—and improve rail safety—Positive Train Control technology requires the deployment of tens of thousands of new wireless towers. As you know, the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of federal undertakings, including construction of facilities that use licensed spectrum.

The staff of the FCC has been working on developing a review process tailored to Positive Train Control construction that modifies how the agency handles tower construction notification. Typically, this process operates on a tower-by-tower basis. However, the agency staff has begun to make changes to our Program Comment process under Section 106 of the NHPA, in order to handle Positive Train Control wayside antenna construction in a batched format. Ideally, this will expedite review. To further speed this process, I understand that the

agency staff has met with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) to discuss this effort. In addition, the agency staff has held listening sessions with Tribal nations. The staff intends to submit the Program Comment to ACHP by the end of this month, with the goal of having the ACHP adopt this process by mid-April.

For my part, I have supported reviewing tower applications in batches—so that we treat similar deployments the same and we process them fast. That way, the knottiest applications do not hold up broader deployment. I also recommended that we find ways to prioritize our review of towers so that we can enable early testing. Finally, to the extent that deployments impact sites of significance to Tribal Nations, all of these efforts must proceed in a way that honors the principles of sovereignty and federal trust responsibility.

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?

The Lifeline program is an important part of keeping everyone in this country connected. After all, having access to telephone service is essential for calling emergency services, being able to secure a job, take care of loved ones, and manage routine interactions with government and with healthcare providers. However, across the board, all of our universal service programs—and Lifeline included—merit regular review, attention, and care.

In 2012, the FCC took steps to reform the Lifeline program. Among other things, the agency strengthened enrollment and certification requirements and imposed new auditing obligations on carriers. These efforts, coupled with the agency's recent enforcement efforts, have already led to a significant reduction of waste, fraud, and abuse in the program. But our work is not done. The agency must continuously evaluate the Lifeline program to ensure that it is meeting its intended purpose under Section 254(b) of the Communications Act—helping ensure that quality services are available at affordable rates for low-income consumers throughout the nation.

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?

As you note, Section 6406 of the Middle Class Tax Relief and Job Creation Act required the National Telecommunications and Information Administration (NTIA) to study the feasibility of allowing unlicensed devices to share the 5850-5925 MHz band. NTIA completed this study along with a review of the 5350-5470 MHz band in January of last year. Among other things, the NTIA report found that non-federal use of the 5850-5925 MHz band is limited to Dedicated Short Range Communications Service systems operating in the Intelligent Transportation System radio service.

Last February, the FCC began a proceeding that included a proposal to allow unlicensed devices in the 5850-5925 MHz band. Since that time, I understand that the FCC has been working with the National Highway Traffic Safety Administration, among others, to determine the viability of this proposal.

However, I do agree with you that unlicensed use in this band has real potential. These are the kind of airwaves that can be a catalyst for new innovation—because this band has enough contiguous spectrum that could enable it to unlock the full potential of the 802.11ac Wi-Fi standard. At the same time, I understand that additional testing of this spectrum to determine whether or not risks to incumbent users can be mitigated will take some time. It may also require the development of sharing technologies like new databases, dynamic frequency selection, and transmit power control. So I believe that we should continue to push forward on these efforts and strive to find a solution that maximizes the efficient use of this spectrum without jeopardizing health and safety.

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?

As noted above, I agree that there is potential for the 5850-5925 MHz band to be a catalyst for new and innovative wireless services. I also believe that we should continue to push forward to find a way to maximize the efficient use of this spectrum while continuing to protect health and safety. So I am open to rule changes, provided they are consistent with these goals.

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?

Although I am not a direct participant in ongoing technical discussions regarding the 5850-5925 MHz band, I understand that the FCC staff has been working to facilitate productive discussions among stakeholders. I support these efforts.

However, I think the FCC can act to increase the amount of spectrum available for unlicensed use in the 5 GHz band in the near term—and specifically in the 5150-5250 MHz band. In July last year, the Department of Defense wrote a letter noting that they do not need access to this band for telemetry, acknowledging that it could be made available for Wi-Fi. The FCC should seize this opportunity—now. We can take the flexible rules that have been responsible for unlicensed use in the 5725-5825 MHz and expand them to the 5150-5250 MHz band. If we do, we can dramatically increase the bandwidth for the 802.11ac standard. This will mean more potential for unlicensed in this band—and less congestion on licensed wireless networks.

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?**

The FCC’s Office of Communications Business Opportunities serves as the agency’s principal advisor on issues, rulemakings, and policies affecting small, women-owned, and minority-owned communications businesses. This office is responsible for developing the triennial report to Congress pursuant to Section 257 of the Communications Act, which, among other things, directs the agency to identify and remove “market barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services.” I fully anticipate that our upcoming report will solicit and may include specific recommendations for the FCC to address what you accurately describe as the unacceptably low level of female and minority communications ownership.

Beyond this report, however, the FCC has taken additional steps to address this issue. In particular, last year the agency clarified its policies and procedures for reviewing transactions involving the broadcast industry—and in particular, those that would result in foreign investment exceeding 25 percent. This action, which was sought by a broad and diverse range of stakeholders—including broadcasters, public interest advocates, and investors—could remove obstacles to new capital investment. This has the potential to improve financial support for small, women-owned, and minority-owned broadcast 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?**

As you acknowledge, the FCC has significant spectrum auction responsibilities in the near term under the Middle Class Tax Relief and Job Creation Act. First and foremost, the agency must develop these auctions consistent with the law. At the same time, we absolutely must be mindful of the potential impact of these upcoming spectrum auctions on the diversity of ownership.

At this time, it is difficult to predict the impact of these auctions on ownership diversity, because the law makes participation by full-power television stations voluntary. However, through channel sharing and other innovations made possible by the incentive auction, it may be possible to strengthen small, women-owned, and minority-owned stations economically while allowing them to continue to broadcast over the air.

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

The timing of the release of the FCC's report pursuant to Section 257 is at the discretion of the Chairman.

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?**

I absolutely concur.

- **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?**

I support the reinstatement of minority tax certificates. History demonstrates that this was the single most effective tool for diversifying the ownership of broadcast stations. From 1978 to 1995, during the time that this policy was in effect, more than 200 media transactions took place, resulting in 290 minority-owned radio stations and 43 minority-owned television stations.

Beyond reinstatement of the minority tax certificate program, I believe that the FCC's Section 257 reports could be improved by including recommendations to Congress regarding legislative action that could further reduce barriers to entry for small, women-owned, and minority-owned communications businesses.

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?**

The FCC's review of tower applications is governed in part by the National Historic Preservation Act (NHPA), which requires the FCC to consider the effects of its federal undertakings on historic properties. In this case, the railroads are FCC spectrum licensees. As a result, the construction of their infrastructure to operate under the law is considered a federal undertaking. Pursuant to FCC rules, the review of tower applications is based on whether or not the poles will be erected and dug into the ground—and not the size of the poles. This is intended to allow State Historic Preservation Officers and Tribal Nations the opportunity to identify and protect historic properties.

- **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?**

I believe that a wholesale exemption of Positive Train Control infrastructure from NHPA review would require negotiation and consultation with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, in addition to government-to-government consultation with Tribal Nations and a full notice-and-comment rulemaking from the FCC. That said, I would be open to considering any approach to expedite review of these deployments that is consistent with the law and respects the sovereignty of Tribal Nations. I believe that finding a solution to this issue should be one of the FCC's highest priorities.