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February 11, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

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
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. 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?

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?

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?

4. An engineering analysis prepared by the New York State Broadcasters Association in 2012 found that over a three-day period there were 49 alleged illegal radio stations operating in the Bronx and Brooklyn. The study estimated that there may be more illegal radio stations operating in the FM and AM band than there are legal radio stations throughout New York City. Continued illegal operations could interfere with vital EAS functions provided by licensed radio stations. Based on public records, the FCC issued 42 Notices of Unlicensed Operations in New York City in 2013. What actions has the FCC taken regarding these stations since issuing the Notices of Unlicensed Operation? Has the FCC confirmed that they have ceased illegal operation?

The Honorable Bob Latta

1. Chairman Wheeler, almost all small and medium sized MVPDs license most of their programming through a single buying group, the National Cable Television Cooperative (NCTC). Existing law clearly indicates that Congress intended a "buying group" to have protections under the program access rules. However, in practice, program access rules provide essentially no protection at all to buying groups such as the NCTC due to problems with the manner in which the rules were drafted by the Commission. This problem was brought to the Commission's attention in June of 2012. In October 2012, the FCC issued an FNPRM tentatively concluding that its definition of a "buying group" needs to be modernized and sought comment on this and other related matters to ensure that buying groups utilized by smaller cable operators avail themselves of the rules as Congress intended. The issue has now been before the FCC for one and one-half years. What's the hold up on issuing an Order on this matter?

2. Chairman Wheeler, the way we watch television today has changed dramatically over the past 20 years. As compared to two decades ago, consumers now have hundreds of programming channels and a myriad of ways to view programming – through traditional subscriptions from cable, satellite and now telcos, video on demand, online streaming of live events, libraries of content available on Netflix and Hulu, new platforms like Aereo, and on hundreds of websites with video clips and episodes. In 1992, the landscape was quite different with basically two evenly matched players – cable and broadcasters. What are your views on whether the current rules governing the video marketplace need updating?

3. As Congress recognized in passing the Spectrum Act of 2012, the 5 GHz band may be the best chance we have to allocate additional spectrum for unlicensed Wi-Fi services. Earlier this year the FCC started a proceeding to expand the amount of spectrum in the 5GHz band that could be used by current and next-generation Wi-Fi devices. Chairman Wheeler, I would like to know whether you view this proceeding as a priority, and whether you agree with a number of your colleagues that the FCC should move expeditiously in the lower UNII-1 (UNII pronounced U-NEE) band to encourage greater spectrum sharing that will make the promise of Gigabit Wi-fi speeds a reality? Would any of the other Commissioners care to share their views on this issue?

The Honorable Brett Guthrie

1. Many smaller cable operators rely upon buying groups to license programming. For more than one and one-half years, the FCC has been working on modernizing its “buying group” definition and I have heard from local cable operators in Kentucky about the importance of ensuring these entities have protections under the program access rules. Can you please provide a status update on whether you intend to release further guidance on the “buying group” definition and when we can expect that?

2. Smaller carriers like Bluegrass Cellular, which serves portions of my district, have previously expressed concerns to the FCC that they may not be able to participate in spectrum auctions that use Economic Area sized licenses. Can you share with me how the Commission plans to ensure the geographic license sizes are done in such a way to ensure the maximum number of participants and the ability to generate the maximum possible revenue?

The Honorable Mike Pompeo

1. Chairman Wheeler, you recently spoke about the marriage of computing and connectivity, and how history has shown that new networks “catalyze innovation, investment, ideas, and ingenuity.” Could you elaborate on the benefits that modern broadband networks can provide compared to the existing telephone network and how the FCC is committed to a policy that delivers these benefits as quickly as possible to consumers?

2. Chairman Wheeler, with NIST in the process of finalizing its Cybersecurity Framework, I would imagine that agencies will begin to review their own cybersecurity requirements. But, as far as I am aware, the FCC does not currently impose cybersecurity requirements on network providers. If the FCC chose to do so, either in response to the President’s Executive Order or otherwise, what would be the FCC’s legal basis for imposing such requirements. Specifically,

what part or parts of the Communications Act provide the FCC with authority to impose cybersecurity requirements?

3. Chairman Wheeler, I am concerned that the current Administration has not voiced its concerns in international forums about protecting existing commercial spectrum users in various spectrum bands. I fear that as the World Radio Conference of 2015 (WRC 2015) approaches, other nations will be ready to manipulate the Conference to intrude on the spectrum of the existing commercial spectrum users. Can you assure me that you will make defense of U.S. commercial spectrum uses a top priority for the Administration as it prepares its strategies for WRC 2015?

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.

2. Congress created the program access rules to level the playing field for competitors seeking to acquire video programming. Small cable operators use buying groups to purchase programming. I understand that the FCC has been working on updating the definition of a buying group for two years. What is the status of this proceeding?

3. As the FCC continues its ongoing work on the IP transition, will the task force examine how service providers are marketing or communicating with consumers about replacing copper based services with IP? How will the FCC ensure that any trials are truly voluntary for consumers?

The Honorable John Dingell

1. I understand that the Commission is considering a methodology for “scoring” bids by reverse auction participants based on factors “in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors” (*see*: GN Docket No. 12-268, pp. 145-56). Does the Commission believe sections 6402 and 6403 of the Act permit it to conduct a weighted reverse auction? Does the Commission believe any other provision of the Act or the Communications Act of 1934 (*e.g.*, subsection 309(j)) grants it authority to conduct a weighted reverse auction? Finally, what effect does the Commission estimate a weighted reverse auction would have on the number of participants and amount of spectrum recovered compared to an unweighted auction? Please explain your response.

2. I understand the National Telecommunications and Information Administration (NTIA) is currently conducting a second round of testing regarding the 5850-5925 Megahertz band that it expects to complete in the spring of 2014. The Government Accountability Office’s (GAO) November 2013 report, “Intelligent Transportation Systems: Vehicle-to Vehicle Technologies Expected to Offer Safety Benefits, but a Variety of Deployment Challenges Exist” (GAO-14-13), states the following on page 26:

As NTIA continues its analysis of potential risk mitigation strategies, DOT officials told us that the department is working cooperatively with the agency to examine spectrum-sharing arrangements that have been proposed for the 5 GHz band and expects results of this analysis to be available in spring 2014. According to DOT officials, the automobile and Wi-Fi industries are discussing other possible spectrum-sharing techniques, but specific approaches have not yet been defined.

Does the Commission believe the Commission, NTIA, the Department of Transportation, the automobile industry, and the Wi-Fi industry should work collectively – rather than separately – in order to ensure these studies explore all potential risk mitigation strategies for the 5850-5925 Megahertz band? If so, does the Commission intend to facilitate such collaboration? Please explain your response.

3. On December 11, 2013, the Commission's Wireless Bureau released a public notice seeking comment on a Partial Economic Areas (PEAs) licensing scheme for the 600 Megahertz band. Does the Commission support licensing the 600 Megahertz band in this fashion (as opposed to using the Economic Areas approach outlined in the *Broadcast Television Incentive Auction NPRM* (GN Docket No. 12-268)? Does the Commission believe a PEA licensing scheme for the 600 Megahertz band will result in participation by the greatest possible number of wireless providers in the incentive auction? Similarly, does the Commission believe a PEA licensing scheme for the 600 Megahertz band will generate the greatest possible amount of revenue from such auction? Please explain your answer.

The Honorable Doris Matsui

1. The FCC, NTIA, and federal agencies have all made real progress in advancing a roadmap that would move a significant portion of the federal users out of the 1755-1780 MHz band so that it can be re-purposed and paired in an auction with the AWS-3 band.

My understanding is that the Commission must now take action on this proposal. Can you update the committee on the FCC's upcoming plan regarding re-purposing the 1755-1780 MHz band and the timing of the next steps by the commission and the target date for auction?

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?

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?
- 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 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?

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?

The Honorable G.K. Butterfield

1. The FCC has launched a proceeding to modernize the highly successful E-rate program. I have heard from my school districts that their websites are becoming more and more essential to their educational mission. For example, today schools use their websites for emergency communications, parental engagement and digital learning. Today this service is supported through the E-rate program through the webhosting category. There is some concern that this funding may be eliminated or phased out. Given the emphasis on digital learning and the critical function a school's website plays in delivering digital learning do you have a perspective on continued funding for webhosting?

2. Schools in my Congressional District are following the FCC's E-rate Modernization efforts very closely. I understand that many school districts around the country have weighed in with comments to the FCC. I hope the FCC will give serious consideration to the concerns of school districts on issues like streamlining the application process and revisions to the current list of eligible services. Can you give me a sense of how you are going to approach the modernization generally and what steps is the FCC taking to ensure that school districts have input into the final decisions?