



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

February 27, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
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 December 12, 2013, at the hearing entitled, "Oversight of the Federal Communications Commission." Following up on that testimony, and in response to your letter of February 12, 2014, please find attached my responses to additional questions for the record.

If you have further questions, please feel free to contact me or Sara Morris, Director, Office of Legislative Affairs, at (202) 418-0095.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler".

Tom Wheeler

Enclosure

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

Responses from Chairman Tom Wheeler to 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?

Response:

In the UHF Discount Notice of Proposed Rulemaking (NPRM), the Commission provided notice of a proposal to grandfather the existing groups and any pending license transfer applications that would exceed the 39% national TV ownership cap absent the UHF discount rule, as of the date of the release of the NPRM. See *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Notice of Proposed Rulemaking, 28 FCC Rcd 14324, 14331, Note 58 (2013). The Commission followed this same approach (of grandfathering interests held as of the date of the NPRM) in 1999 with respect to a change in its attribution of ownership interests and again when dealing with the attribution of Local Marketing Agreements (LMAs). The broadcast industry has been on notice since the release of the 1998 Biennial Review in 2000, that the UHF Discount could be eliminated after the DTV transition. The Commission sought comment in the current NPRM on the specific proposals regarding grandfathering in addition to seeking comment on whether to eliminate the UHF Discount at all. The proceeding is pending, and no final decisions have been made.

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

Response:

Prior to my arrival at the Commission, there was a concerted effort to have a data-driven proceeding to evaluate the current broadcast ownership rules as required by Congress. Given the complexities involved in the proceeding, I determined at the end of last year that it would be best to take a fresh look at these issues. The Commission is on-track to seek a new round of comments in the near term that will help us make an informed decision going forward, keeping in mind our duty to serve the public interest, as well as complying with the issues raised by the Third Circuit's remand.

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

Response:

The role of the Commission, pursuant to Congressional directive, is to review the broadcast ownership rules on a periodic basis to determine if the rules continue to serve the public interest as a result of competition. I am committed to carrying out that directive, and doing so by reviewing the impact of each individual rule, and basing decisions on a complete, data-driven record. As noted, I have determined to take a fresh look at the issues in the pending quadrennial review, and we are on-track to seek a new round of comments in the near term.

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?

Response:

Pirate radio enforcement remains one of the highest priorities for the Enforcement Bureau's New York field office as well as our other field offices nationwide. Our agents generally focus on quickly issuing Notices of Unauthorized Operation (NOUOs) to as many pirate broadcasters as possible. In Fiscal Year 2013, the New York Field Office issued 73 NOUOs, and in some cases, the same station may have received multiple NOUOs. For several weeks in summer 2013, agents were detailed from several other field offices to work on a special pirate enforcement initiative in New York City. These agents were successful in shutting down various pirates, and their work resulted in a significant uptick in pirate enforcement such that, in FY 2013, NY was responsible for more than 60 percent of the NOUOs issued by the entire field. While an NOUO often is enough to shut down the offending station, some pirates refuse to comply even after repeated FCC visits. In such cases, the Field Office can escalate its enforcement actions by issuing Notices of Apparent Liability (NALs) against the pirate broadcaster, but as with the NOUOs, some pirates ignore the NALs and continue operating.

The seizure of equipment through an *in rem* action requires a coordinated effort with the U.S. Attorney's office and U.S. Marshals. One of the benefits of an *in rem* action is that it is directed at the equipment, so in cases where a pirate station is unattended, the process can move forward without having to identify the operator. Several such actions have occurred in the last few years, and several actions are pending with NYC-area U.S.

Attorney's Offices. Due to the confidential nature of the Enforcement Bureau's investigations, additional details regarding the pending actions are not available. However, I want to assure you that agents continue to work to reduce the instances of unlicensed operation in NYC and across the country.

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?

Response:

The Media Bureau is currently evaluating the record in this proceeding, which raises complex legal and policy issues impacting not just small cable operators but also programmers. The Bureau is analyzing the costs and benefits of such a rule change as well as the effect of this proposed rule change on the video marketplace generally. While I understand the concerns raised by the NCTC, nothing is prohibiting the NCTC from qualifying as a buying group under the existing rules, as they previously have done.

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?

Response:

There is no question that the video marketplace of 2014 barely resembles that of 20 years ago. Innovation and competition, especially those flowing from IP-enabled technologies, have led to a commingling of many previously distinct and separate services. In light of this dynamism, it is essential that the Commission exercise its lawful discretion to interpret the Communications Act to meet contemporary circumstances. As you know, the FCC is statutorily required to assess its media ownership rules every four years and determine if they need to be modified to serve the public interest. In fact, it’s been eight years since the Commission last completed a quadrennial review, so it goes without saying that the video marketplace has changed dramatically since the FCC last updated these rules. In the near term, the Commission will begin in earnest its 2014 quadrennial review. This will be an open evaluation undertaken to understand how evolving market structures and competition should influence how we act to preserve the continuing values of competition, localism, and diversity of voices in our local media.

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?

Response:

I do consider this a priority, and the Commission is committed to advancing the tremendous promise the 5 GHz band offers for unlicensed use. Staff has been working with all of the stakeholders to resolve technical challenges associated with increasing the utility of this spectrum, while also protecting incumbent, licensed users. In February 2013, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on how to increase the utility of the existing U-NII 5 GHz bands – including the UNII-1 band – as well as the technical feasibility of allowing operation of U-NII devices in the 5350-5470 MHz and 5850-5925 MHz bands following the release of NTIA’s January 2013 initial study evaluating the 5 GHz bands. I plan to circulate an Order to my fellow Commissioners for their consideration at the March Open Meeting that, among other things, would remove indoor-use only restrictions and increase permitted power levels in the UNII-1 band.

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?

Response:

The Media Bureau is currently evaluating the record in this proceeding, which raises complex legal and policy issues impacting not just small cable operators but also programmers. The Bureau is analyzing the costs and benefits of such a rule change as well as the effect of this proposed rule change on the video marketplace generally. While I understand the concerns raised by cable operators like yours in Kentucky, nothing is prohibiting local cable cooperatives from qualifying as a buying group under the existing rules, as they previously have done.

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?

Response:

Section 6403(c)(3) of the Spectrum Act directs the Commission to “consider assigning licenses that cover geographic areas of a variety of different sizes” when adopting rules for the incentive auction. In the Incentive Auction *Notice of Proposed Rulemaking*, the Commission proposed to license the 600 MHz band in Economic Areas (EAs), and also sought comment on other geographic sized license areas. Additionally, in response to a proposal from Competitive Carriers Association (CCA), in December 2013, the Commission released a Public Notice seeking comment regarding licensing the 600 MHz band in new license areas called Partial Economic Areas (PEAs). The Commission continues to review the record related to geographic areas, and has not made any final decisions.

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?

Response:

Our communications networks are rapidly transitioning from copper-based networks that Alexander Graham Bell would recognize to wired and wireless IP-based networks – and that’s a good thing. These new networks are more efficient, which can enable better products, lower prices, and massive benefits for consumers.

The Commission’s overarching goal is to protect the core values embodied in the Network Compact and codified in the Communications Act: public safety, universal service, competition, and consumer protection. Our challenge is to preserve the values that consumers and businesses have come to expect from their networks, while unleashing new waves of investment and innovation. This will deliver untold benefits for the American people.

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?

Response:

The Communications Act directs the Commission to promote the reliability, resiliency, and availability of the nation’s communications networks at all times through the adoption and enforcement of rules, including rules related to cybersecurity. For example, existing regulations include requirements for certain communications providers to report on the reliability and security of communications infrastructures, such as service disruptions and outages that meet specific thresholds that affect public safety communications and emergency response regardless of the cause of the disruption.

The Commission will continue to work with our colleagues in other federal agencies, as well as our Federal Advisory Committees – such as the Communications, Security, Reliability, and Interoperability Council (CSRIC) – to assess and make recommendations in all public safety arenas, including cybersecurity.

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?

Response:

The Commission is the policy and technical expert that assists the Department of State as it prepares for the WRC-15. You can be assured Commission staff work very closely with the State Department and other agencies on issues that will be discussed at the WRC-15. The Commission has renewed the charter for the Advisory Committee that collects private sector recommendations on issues to be considered at WRC-15. To date, four meetings on preparations for WRC-15 have been held and over 35 recommendations on WRC-15 issues have been provided. The fifth meeting is scheduled for March 12, 2014.

The Commission also is actively seeking to advance the U.S. wireless broadband objectives by participating in international meetings concerning future international allocations for the implementation of mobile broadband systems through meetings of the Joint Task Group (JTG) during ITU meetings.

The Honorable Henry Waxman

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

Response:

I think it is important to note that these stations are licensed as TV stations and not radio stations. Although technically compliant with Commission rules as long as a video signal is provided, the intent of our allocation and licensing rules is for these licensees to provide video services. In August 2012, the Video Division of the Media Bureau dismissed an application from an LPTV station seeking to provide such a hybrid analog-digital signal because it did not comply with existing rules regarding transmission standards and they hybrid operation proposal could cause impermissible interference. I am not aware of any existing proposal currently pending at the Commission that would address the concerns raised by the Division in 2012.

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?

Response:

The Media Bureau is currently evaluating the record in this proceeding, which raises complex legal and policy issues impacting not just small cable operators but also programmers. The Bureau is analyzing the costs and benefits of such a rule change as well as the effect of this proposed rule change on the video marketplace generally. While I understand the concerns raised by small cable operators, nothing is prohibiting these cooperatives from qualifying as a buying group under the existing rules, as they previously have done.

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?

Response:

The *Technology Transitions Order* sets forth certain values-based conditions and rebuttable presumptions that will guide the Commission’s evaluation of proposals for any voluntary service-based experiments. In that *Order*, the Commission concluded that “[w]e can only achieve our goal of advancing technology transitions if customers are fully educated and informed.” To that end, one of the critical components of the evaluation process will be how the provider proposes to notify customers of any experiments.

Moreover, the *Order* unambiguously stated that no experiment can be initiated in a manner that requires existing customers to participate. To the extent that providers wish to temporarily stop offering new deployments of legacy services (e.g., to new customers) at the initiation of an experiment, Section 214 of the Communications Act requires providers to obtain authority to discontinue, reduce, or impair service. After successful initiation of an experiment, the Commission is prepared to consider additional requests to withdraw the offering of legacy services. If a provider feels it needs relief from any requirements of the Act or the Commission’s rules, or state rules, that provider must seek the appropriate relief from the Commission at the time it submits its experiment proposal.

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.

Response:

As you note, the Incentive Auction *Notice of Proposed Rulemaking* (NPRM) sought comment on whether and how the Commission should recognize the heterogeneous nature of the television spectrum that different broadcasters might contribute to the auction. In particular, the Commission sought comment on the possibility of “scoring” broadcaster bids to reflect the differences between the spectrum contributions of different bidders. We are not considering taking into account a station’s value as an ongoing broadcasting concern. Staff is currently considering whether scoring bids could demonstrably improve auction outcomes and lower the cost of clearing spectrum in the auction by improving how the auction selects the stations that are assigned a channel and those that are paid to relinquish spectrum rights. The record currently is under review, and there have not been any final decisions.

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.

Response:

The Commission supports joint efforts among NTIA, the Department of Transportation, and industry stakeholders to develop and test technical solutions that would also unlicensed use of the 5850-5925 MHz band, while protecting Intelligent Transportation Systems. The Commission is coordinating closely with NTIA to monitor and evaluate the work of the DSRC Coexistence Tiger Team, established by the Institute of Electrical and Electronics Engineers (IEEE), which is working to develop a technical solution to the spectrum sharing issues in the band. The goal is to reach an expeditious resolution to these complex matters that best provides for effective utilization of the spectrum.

On February 7, 2014, the Tiger Team filed a letter with the FCC noting positive collaboration with the participants, and anticipating initial results from simulations by mid-2014. Prototype tests are slated to begin later in the year, and the Tiger Team plans to explore additional coexistence techniques throughout the year.

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.

Response:

Section 6403(c)(3) of the Spectrum Act directs the Commission to “consider assigning licenses that cover geographic areas of a variety of different sizes” when adopting rules for the incentive auction. In the Incentive Auction *Notice of Proposed Rulemaking*, the Commission proposed to license the 600 MHz band in Economic Areas (EAs), and also sought comment on other geographic sized license areas. Additionally, in response to a proposal from Competitive Carriers Association (CCA), in December 2013, the Commission released a Public Notice seeking comment regarding licensing the 600 MHz band in new license areas called Partial Economic Areas (PEAs). The Commission continues to review the record related to geographic areas, and has not made any final decisions.

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?

Response:

Commission staff has appreciated the opportunity to meet with the Committee and its staff regarding this subject. The Commission remains committed to meeting the statutory deadlines set forth in the Middle Class Tax Relief and Job Creation Act for auctioning and licensing the 2155-2180 MHz band, which could be paired with the 1780-1855 MHz band.

I plan to circulate an Order to my fellow Commissioners for their consideration at the March Open Meeting that would set the framework for the AWS-3 auction. We anticipate that we will auction AWS-3 spectrum as early as September 2014.

The Honorable Ben Ray Lujan

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

Response:

I agree that it is essential to provide resources to ensure that the FCC is able to address the telecommunications needs of Tribal Nations and Native Communities. Prior to three years ago, ONAP was not an individual office within the Consumer and Governmental Affairs Bureau. Liaison with Tribal Governments was then part of the responsibilities of the Office of Intergovernmental Affairs. The decision to create ONAP and reorganize internally, as well as commit specialized personnel, has had an important, positive impact on our work in this area. You have my commitment to follow this important path as we continue to address the telecommunications needs of all Americans.

ONAP, however, benefits greatly by its position within the Consumer and Governmental Affairs Bureau – which is well-situated to continue to facilitate cross-agency coordination and provide administrative oversight and leadership. We take seriously the need to encourage bureau efficiencies and reduce or pool administrative costs. Providing this administrative structure also frees up the specialized ONAP staff to participate directly in tribal consultations instead of day-to-day management and planning sessions that occupy our Bureau and Office Chiefs and their deputies.

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

Response:

One of the core components of the Network Compact is universal access, and, consistent with that value, the deployment of voice and broadband infrastructure on Tribal lands is a high priority for the Commission. Throughout the process to reform the legacy high-cost universal service mechanisms, the Commission has recognized that the unique circumstances and challenges of providing service on Tribal lands require special consideration.

I am a firm believer in the importance of universal service, and the Commission must make timely decisions in order to provide regulatory certainty and create incentives to further efficient investment in broadband networks. We must also be open to modifications to the reforms if it is clear that particular rules are not serving their intended purpose. To that point, as I stated during the Subcommittee's hearing, I have directed the Wireline Competition Bureau to prepare an item for the Commission's consideration that would eliminate the Quantile Regression Analysis (QRA) benchmarks for rate of return carriers. I look forward to continuing the work of reforming and modernizing the Universal Service Fund high-cost program – as well as other components of the Fund – and to working with stakeholders, including Tribes and carriers serving Tribal lands, to ensure that all Americans have access to robust voice and broadband services.

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

Response:

On February 18, 2014, the Wireline Competition Bureau and the Wireless Telecommunications Bureau conditionally designated NTUA Wireless as an eligible telecommunications carrier (ETC) for those areas on the Navajo Nation in which NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I. In areas in which NTUA Wireless's designation becomes effective pursuant to the Tribal Mobility Fund, NTUA Wireless will be required to provide Lifeline services and satisfy other ETC obligations. Otherwise NTUA Wireless is designated as a limited ETC, eligible to receive Lifeline-only support on the Navajo Nation in areas where NTUA Wireless does not receive support in the Tribal Mobility Fund Phase I.

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

Response:

It is a top priority of the Commission to work with all parties to help them fulfill their various legal obligations and responsibilities and advance the deployment of Positive Train Control (PTC) within the timeframe prescribed by the Railroad Safety Improvement Act of 2008 (RSIA).

Until early 2013, the Commission had been informed by the railroads that positive train control (PTC) would be deployed largely on existing infrastructure. However, in the spring of 2013, the railroads disclosed to the Commission plans to deploy PTC using more than 20,000 new wayside poles.

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of the construction of facilities that use licensed spectrum. Consistent with statutory requirements, since May 2013, Commission staff has been working with all stakeholders to modify our current process under Section 106 of the NHPA to handle our review of PTC deployments more efficiently. Steps taken in this regard include:

- (1) Meetings with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO);
- (2) Listening and consultation sessions with Tribal Nations, including presentations by the Class 1 freight railroads and sessions with railroad representatives in attendance, as well as government-to-government consultation sessions; and
- (3) Release of scoping documents and a draft Program Comment for stakeholder and public comment to modify our Section 106 process.

As a result of these efforts, on January 8, 2014, FCC staff made available to the Class 1 freight railroads a Beta test batching format to submit some of their proposed wayside facilities for Tribal and State historic preservation review. The Commission intends to submit the Program Comment to ACHP by the end of February, allowing for adoption by ACHP by mid-April under ACHP's rules.

The Commission is also in regular communication with the Department of Transportation, the Federal Railway Administration, and the National Transportation Safety Board regarding PTC issues.

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

Response:

Lifeline has been an essential program – for jobs, safety and security, and access to government services – for millions of Americans who otherwise could not afford phone service. While the Commission’s comprehensive 2012 Lifeline reforms have made significant progress to address concerns about the program, our work is not complete.

The Commission is continuing to monitor the impact of its reforms, and actively enforcing its rules. In addition, the Commission is evaluating additional potential steps to ensure the integrity of the Lifeline program based on proposals contained in a *Further Notice of Proposed Rulemaking* that accompanied the *2012 Lifeline Reform Order*, as well as proposals contained in two petitions for rulemaking that were put out for comment. The Commission is actively reviewing the record in response to the proposals in the *Further Notice* and the petitions, in light of developments in the Lifeline market.

6. As required by provisions in the Middle Class Tax Relief Act of 2012, the Commission has an open Notice of Proposed Rule-making (NPRM) to allow greater Wi-Fi use in the 5 GHz band. Finalizing this rule could greatly benefit consumers by providing the spectrum necessary for tremendously faster Wi-Fi connection speeds, with greater capacity and a host of new Wi-Fi applications. Given it is a secondary use, Wi-Fi provides tremendous value to the American public and is frequently used to offer free access in public spaces. It is a great example of maximizing the use of this scarce resource. The President’s June 2013 memorandum – Expanding America’s Leadership in Wireless Innovation – calls for the FCC, in consultation with NTIA, to “promulgate and enforce rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance” Despite having been allocated this spectrum in 1999, there is still only one DSRC test deployment in the entire United States. Furthermore, the Department of Transportation has stated pilot deployments will not begin until 2015 or 2016. It seems that if we are going to require strict build-out requirements for companies that pay significant sums for spectrum, we should, at a minimum, require incumbents who have spectrum and are not fully utilizing it to work with entities that want to use that spectrum on a secondary basis, in this case the Wi-Fi industry. It only makes sense to maximize the use of that spectrum. Do you think that is a fair requirement?

Response:

Yes. The Commission is committed to advancing the tremendous promise the 5 GHz band offers for unlicensed use. As part of an ongoing rulemaking process in this matter, our staff has been working with all of the stakeholders to resolve the technical challenges associated with increasing the utility of this spectrum, while also protecting incumbent, licensed users.

7. The President’s June 2013 memorandum – Expanding America’s Leadership in Wireless Innovation – also calls for the FCC in consultation with NTIA, to: “identify spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users” I, along with several of my colleagues, recently wrote to you regarding the importance of looking for all sharing solutions in the 5850-5925 block. The 5850-5925 block is a key component of maximizing use of the 5 GHz band, but I understand the incumbent in that spectrum, the Intelligent Transportation System of America, has continually raised concerns and objections to sharing despite any final conclusions about the possibilities for successful sharing. That approach seems inconsistent with the President’s call for “reasonable expectations.” Can you explain how you interpret this from the Commission’s perspective, and in this particular case, would you agree “reasonable expectations” for ITS require at least a full dialogue looking for sharing with the respective agencies and stakeholders? If it were necessary, would you view small adjustments to the DSRC standards to facilitate shared use at this nascent point in its development, given it is only deployed in 2,800 vehicles in a pilot program, as a reasonable expectation?

Response:

The Commission supports joint efforts among NTIA, the Department of Transportation, and industry stakeholders to develop and test technical solutions that would also unlicensed use of the 5850-5925 MHz band, while protecting Intelligent Transportation Systems. The Commission is coordinating closely with NTIA to monitor and evaluate the work of the DSRC Coexistence Tiger Team, established by the Institute of Electrical and Electronics Engineers (IEEE), which is working to develop a technical solution to the spectrum sharing issues in the band. The goal is to reach an expeditious resolution to these complex matters that best provides for effective utilization of the spectrum.

On February 7, 2014, the Tiger Team filed a letter with the FCC noting positive collaboration with the participants, and anticipating initial results from simulations by mid-2014. Prototype tests are slated to begin later in the year, and the Tiger Team plans to explore additional coexistence techniques throughout the year.

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

Response:

The Commission is working collaboratively with the stakeholders and the IEEE Tiger Team to identify potential technical methods for addressing these issues, and staff will continue to monitor this situation and work toward a successful completion of the rulemaking process.

The Honorable Bobby Rush

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

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

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

Response:

As you note, Section 257 of the Communications Act requires the FCC to examine and eliminate market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications services. In addition to the on-going work on the current Section 257 review, the Commission’s Office of Business Opportunities (OCBO) has taken steps to address some of these issues. For example, OCBO hosts annual conferences on access to capital and supplier diversity. Its most recent access to capital conference focused on angel investment strategies for small businesses. OCBO also works closely with the Advisory Committee on Diversity in the Digital Age to develop diversity related initiatives for the Commission. The current Diversity Committee is focusing on economic opportunities in the area of unlicensed devices, second tier opportunities in wireless, and diversity related employment best practices in the broadcasting industry. Additionally, in 2013, the Media Bureau released a Declaratory Ruling clarifying the process regarding license transfer applications that involve more than 25% foreign investment. Such clarification was requested in the hopes that additional revenue streams would potentially be available to help existing or new entrants in the broadcasting industry – including minority and female station owners.

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

Response:

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

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

Response:

The Commission anticipates that it will release its next Section 257 Report by this coming summer.

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

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

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

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

Response:

Generally, broadcast licensees are expected to serve the public interest by providing programming responsive to the needs of their respective communities. Beyond that, due to First Amendment concerns, the Commission cannot dictate what programming a station must provide to its viewers. However, the impact of diversity of ownership and diversity of viewpoint as they relate to the individual ownership restrictions are considerations under the quadrennial broadcast ownership review. The Commission

continues its work on the current Section 257 report with the specific goal of identifying and eliminating the barriers that currently exist for new entrants into telecommunications – including the broadcast industry. Completion of the report to Congress could provide additional recommendations for action. As you note, access to capital appears to be one of the major hurdles for small businesses, and tax certificates could be one way Congress could act to help increase the total of minority and women owned stations.

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

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

Response:

It is a top priority of the Commission to work with all parties to help them fulfill their various legal obligations and responsibilities and advance the deployment of Positive Train Control (PTC) within the timeframe prescribed by the Railroad Safety Improvement Act of 2008 (RSIA).

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) require environmental and historical review of the construction of facilities that use licensed spectrum. The construction of any infrastructure that will be used in connection with a license granted by the Federal Communications Commission is subject to FCC review under NHPA Section 106. It is the fact of the FCC license, rather than the size of the infrastructure, that requires the review.

Railroad rights-of-way are not currently exempt from Section 106 review. Under applicable statutes and regulations, a wholesale exemption of PTC infrastructure from NHPA review would require negotiation and consultation with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), as well as government-to-government consultation with Tribal Nations and a full notice-and comment rulemaking. Even if the record would ultimately support broad exclusions, this process would take far longer than the December 31, 2015, statutory deadline to complete.

Until early 2013, the Commission had been informed by the railroads that PTC would be deployed largely on existing infrastructure. However, in the spring of 2013, the railroads disclosed to the Commission plans to deploy PTC using more than 20,000 new wayside poles.

Consistent with statutory requirements, since May 2013, Commission staff has been working with all stakeholders to modify our current process under Section 106 of the NHPA to handle our review of PTC deployments more efficiently. Steps taken in this regard include:

- (1) Meetings with the ACHP and the NCSHPO;
- (2) Listening and consultation sessions with Tribal Nations, including presentations by the Class 1 freight railroads and sessions with railroad representatives in attendance, as well as government-to-government consultation sessions; and
- (3) Release of scoping documents and a draft Program Comment for stakeholder and public comment to modify our Section 106 process.

As a result of these efforts, on January 8, 2014, FCC staff made available to the Class 1 freight railroads a Beta test batching format to submit some of their proposed wayside facilities for Tribal and State historic preservation review. The Commission intends to submit the Program Comment to ACHP by the end of February, allowing for adoption by ACHP by mid-April under ACHP's rules.

The Commission is also in regular communication with the Department of Transportation, the Federal Railway Administration, and the National Transportation Safety Board regarding PTC issues.

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?

Response:

The E-rate Modernization *Notice of Proposed Rulemaking* sought comment on phasing out support for supplemental or "ride-over" services that are not directly related to connectivity, such as webhosting and e-mail service. Specifically, the Commission sought comment on whether E-rate funds should continue to be used to support services such as webhosting and email at costly monthly rates when many such services are offered at lower prices or for free to other users, and particularly in light of the fact that there are many schools which do not receive any E-rate support for critical connectivity needs. The Commission will take all views on this issue into full consideration as we move forward with modernization of the E-rate program.

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?

Response:

Last summer, the Commission began a process to collect input on the modernization of the E-rate program. The Commission specifically sought comment on streamlining the application process, increasing transparency, and providing more assistance to schools and libraries to help them lower the prices they pay. Over 1,400 comments have been received to date, and hundreds of meetings have been held with interested parties. Let me assure you that the Commission will continue to seek public comment on E-rate reform issues from all stakeholders, including schools and libraries, and will take their views into full consideration.

Prioritizing E-rate program resources to focus on high-speed broadband and making administrative improvements to the program can significantly expand the amount that goes to high-speed broadband without additional spending, and ensures that funds intended for schools and libraries get to them faster and go farther. Other steps to improve the management of the program, such as resolving a substantial appeals backlog, will free up additional reserved funds.