Attachment—Additional Questions for the Record

Subcommittee on Communications and Technology
Hearing on
"Accountability and Oversight of the Federal Communications Commission"
May 15, 2019

The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Anna G. Eshoo (D-CA)

1. **Last fall, the FCC preempted municipalities from having a say in deploying small cell sites, the infrastructure needed for 5G. This poor policy has led to nearly 100 municipalities, public power utilities, and associations to sue the FCC over these actions (FCC 18-111 and FCC 18-133). America needs to win the race to 5G for many reasons, but it must be done equitably. You dissented, in part, from these actions. How can the FCC can ensure America's 5G leadership without steamrolling local communities?**

Response: I do not believe the Communications Act permits Washington to run roughshod over state and local authority like the FCC did in its decision to preempt municipalities from having a say in the deployment of small cell sites. Accordingly, I regret that instead of working with our state and local partners to speed the way to 5G deployment, in this decision the FCC chose to cut them out. As a result, the FCC told communities nationwide that going forward Washington will make choices for them—about which fees are permissible and which are not and about what aesthetic choices are viable and which are not—all with a cavalier disregard for the fact that these infrastructure decisions do not work the same in every part of the country.

I believe the FCC did not have to do it this way. I believe there are other approaches that are less likely to yield litigation and more likely to facilitate rapid deployment that merited consideration. To this end, I offered three fundamentals to inform our work going forward.

First, we need to acknowledge that we have a history of local control in this country but also recognize that more uniform policies can help us increase deployment in the future. To facilitate this, I believe the FCC should develop model codes for small cell and 5G deployment—but make sure they are supported by a wide range of industry and state and local officials. Then we need to review every policy and program, from universal service to grants and low-cost loans at the Department of Commerce, Department of Agriculture, and Department of Transportation, and build in incentives to use these models. In effect, we would use carrots instead of sticks.

Second, the FCC needs to own up to the impact of the Administration's trade policies on 5G deployment. As a result of our escalating trade war with China, we now have a 25 percent

tax on equipment like antennas and routers, which are some of the most important building blocks of 5G networks. This is a real cost that is diminishing our ability to lead the world in 5G deployment and it merits as much or more discussion as the sometimes theoretical cost associated with state and local review.

Third and finally, we should explore dusting off our 20-year-old over-the-air-reception device rules, or OTARD rules. These rules were designed to protect homeowners and renters from laws that restricted their ability to set up television and broadcast antennas on private property. Today OTARD rules do not contemplate 5G deployment and small cells. However, small clarifications to our rules could change that. To this end, I am pleased to report that the FCC has followed my lead on this subject and on April 12, 2019 adopted a rulemaking seeking comment on how to think anew about OTARD policies and 5G network deployment.

2. **During the worst fire in California's history, Verizon throttled the data speeds of Santa Clara County firefighters, hindering their ability to communicate.**

    a. **If the 2015 Open Internet Order wasn't repealed, could this practice have been considered a violation of the ban on "unjust and unreasonable" business practices?**

Response: If the 2015 Open Internet Order was still in place, the FCC clearly could have investigated this practice to determine whether it violated the law or FCC rules.

    b. **Has the FCC taken any actions to avoid a repeat of this issue in California and other parts of the country by Verizon or other ISPs?**

Response: No.

3. **Under the 2015 Open Internet Order, the FCC could investigate possible violations of bright-line prohibitions of net neutrality and other "unjust and unreasonable practices."**

    a. **Since the 2017 Restoring Internet Freedom Order, has the FCC been investigating whether ISPs are engaging in blocking, throttling, or paid prioritization practices, both as disclosed by ISPs and undisclosed practices?**

Response: No.

    b. **If not, would the FCC even know if "Over the past year, the Internet has remained free and open," as Chairman Pai stated on January 2, 2019?**

Response: Apart from maintaining a portal for broadband Internet service providers to file transparency disclosures—which is simply a link to the agency's filing system—the FCC has taken itself off of the field when it comes to the practices of broadband Internet providers. I believe this was one of a number of mistakes the agency made when it rolled back net neutrality.

4. **The National Verifier has launched in 16 states where it lacks access to any databases for state-administered programs, such as the Supplemental Nutrition Assistance Program and Medicaid. Should an individual be informed that the National Verifier was not able to confirm their eligibility, they could reasonably consider this a denial from Lifeline, even though they may be eligible.**

    a. **Given these issues, what specifically is the FCC or USAC doing to ensure the National Verifier connects with state databases in the states where it has launched or where it is planning to launch, and what is the timeline to do so?**

Response: I supported the creation of a National Verifier over three years ago. That's because if properly implemented, this system would improve the administration of the Lifeline program. However, right now I have real concerns about how the National Verifier has been introduced. In too many states, it does not include all databases that can be used to confirm program eligibility. It is time for the FCC to work with USAC to honestly assess the present and future capabilities of this system. In addition, the FCC should publish a timeline for updating and enhancing the additional databases it expects to incorporate and detailing any others for which it lacks access.

    b. **Given the above issues regarding the rollout of National Verifier, why is the FCC pushing forward to launch in more states rather than focusing on improving connections to federal and state databases in states where National Verifier is currently deployed?**

Response: The National Verifier should make program administration and accountability easier, not harder. I am concerned about the lack of transparency regarding the National Verifier's present capabilities. Likewise, I am concerned about the lack of transparency regarding this system's expected capabilities in the future. As noted above, I believe that the first step required to remedy this situation entails the FCC working with USAC to honestly assess the present and future capabilities of this system. In addition, the FCC should publish a timeline for updating and enhancing the additional databases it expects to incorporate and detailing any others for which it lacks access.

5. **As the FCC considers USTelecom's petition for forbearance from key provisions of the Telecommunications Act of 1996, what has the FCC done to consider the impact of granting this petition on (i) small and medium-sized ISP's building out the fiber networks needed for upgrading our country's wireless infrastructure to 5G and for closing the digital divide; and (ii) federal, state, local, and tribal government**

agencies, particularly those that will continue to rely on TDM-based telephone services through the continued availability of resale requirements?

Response: At this time, the Chairman has not yet shared a draft decision regarding all of the outstanding issues in this petition for forbearance. But when that does occur, I will consider the impact to small and medium communications providers as well as federal, state, local, and Tribal users of telecommunications services as part of my review.

6. **Should the FCC further eliminate media ownership rules as it is considering, Americans may experience a sharp reduction in the breadth and diversity of voices available in any local media market. One entity could control all broadcast TV stations, local newspapers, and radio stations. This is a direct rebuke to a fundamental value that underpins our democracy. Please share whether you are considering such outcomes and to what degree you have concerns about the consolidation of media ownership.**

Response: The way that Americans get their news has undeniably changed. Gone are the days of waiting for the news to hit the front stoop in paper in the morning and waiting for the news via a half-hour broadcast session at night. Today we all seek out news when we want it, where we want it, and on any screen handy. But while this anytime and anywhere access to global and national information is revolutionary, it is accompanied by a paradoxical trend—a decline in local journalism and news production.

In fact, last year, the University of North Carolina School of Media and Journalism released a study detailing the stark decline of local news in rural areas. Newspapers have shuttered, and broadcast stations are increasingly owned by national companies with limited ties to the communities they serve. What is emerging are news deserts—areas of the country where national news dominates but local news is disappearing.

The FCC response to this problem has been giving a green light to further media consolidation. To this end, the agency has rolled back its rules prohibiting the cross-ownership of newspaper and broadcast entities in the same community and changes to its policies limiting the number of stations any one owner could have in a single market. While I believe some adjustment to these rules was warranted in order to reflect the modern media marketplace, I do not believe that burning them down entirely has helped with news deserts nor bolstered the principles of localism, competition, and diversity that have historically been the core of our approach to media policy under the Communications Act.

   a. **Has the FCC's newly created Office of Economic Analysis provided input on the impact of eliminating media ownership rules on consumer prices in the video marketplace?**

Response: I am not aware of specific input, analysis, or research provided by the Office of Economic Analysis regarding the impact of eliminating media ownership rules on consumer prices in the video marketplace.

7. **The FCC is considering a proposal to alter what may be considered toward the statutory maximum of five percent franchise fees (MB Docket No. 05-311). This would negatively impact the access of communities to public, educational, and governmental (PEG) programming. As I stated in my February 22, 2019 letter to the FCC, Congress clearly intended for communities to have access to PEG. The legislative history of the 1984 Cable Act explicitly states that franchise fees are only made up of monetary payments and do not include PEG contributions (H.R. Rep. No. 98-934 (1984)). Congress made its intent on this matter explicit and clear.**

    a. **Under what statutory authority is the FCC considering this proposal which would have the effect of including PEG contributions in franchise fees?**

Response: Under the Communications Act, franchise fees are limited to five percent of cable revenues. Moreover, the law defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other government entity on a cable operator or cable subscriber, or both, solely because of their status as such." Recently, this congressionally-mandated limit on franchise fees was the subject of a remand from the Court of Appeals for the Sixth Circuit. Accordingly, on September 25, 2018 the FCC released a rulemaking seeking comment on the issues raised by this court decision, namely including mixed-use networks and the treatment of cable-related in-kind contributions in light of the statutory cap.

The record in response to this proceeding is extensive. More than 3500 comments have been filed with the FCC. Moreover, Members of Congress, mayors, state legislators, and city councils have written the agency in droves impressing upon me the need to consider the impact of our policies on PEG channels as we navigate the issues raised in this court decision. I believe, like so many who have made their voices heard in this proceeding, that the FCC needs to do everything it can within its statutory authority in order to ensure that PEG channel programming can not only survive, but thrive.

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The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Yvette D. Clarke (D-NY)

1. **It is wonderful to see how technology has broken down barriers for people with disabilities, but I am concerned this same technology can introduce new challenges for consumers. As the FCC considers moving to fully Automated Speech Recognition or ASR, I am concerned that fully automated ASR might not work as well for certain types of accents or voices. This could become a serious problem as we move towards widespread adoption of such services. Certain consumers might be left behind.**

    a. **Do you have thoughts on the question of ASR bias?**

Response: I agree that voice recognition bias is a serious issue. There is academic research that suggests voice recognition technology can yield results that vary by gender and dialect. This is one of several issues associated with service quality that I believe the FCC should have addressed before authorizing ASR in its June 7, 2018 order. Nonetheless, there is an outstanding rulemaking on performance standards associated with the use of ASR to substitute for traditional Internet Protocol Captioned Telephone Service. Going forward, I want to see the agency acknowledge that with functional equivalency as our mandate under the Americans with Disabilities Act, we need to provide guidance regarding how it can be achieved, especially in light of problems like recognition bias.

    b. **Do these technologies work better for certain populations than others? If so, what might that mean for relying on this service.**

Response: There is academic research that suggests voice recognition technology can yield results that vary by gender and dialect. Going forward, I want to see the agency acknowledge that with functional equivalency as our mandate under the Americans with Disabilities Act, we need to provide guidance regarding how it can be achieved, especially in light of problems like recognition bias.

2. **In considering the UST petition, does the Commission have the flexibility to take into account disparate market conditions or is it required to simply approve the petition as filed? Does the Commission have the flexibility to consider the impact of a natural disaster in a local market, such as Hurricane Maria in Puerto Rico, and how the local market conditions were and still are being impacted post-hurricane?**

Response: Section 10(a) of the Communications Act sets forth the criteria for forbearance determinations. The FCC needs to find that the provisions at issue are not needed to ensure that service is just and reasonable; that enforcement is not necessary to protect consumers; and that forbearance itself is in the public interest. As part of its public interest analysis, the FCC also must consider whether forbearance will promote competitive market conditions. Although the FCC has taken different approaches to market analysis with past forbearance decisions, I believe the agency's statutory directive is purposefully flexible to account for the conditions that you have identified.

3. **Will the Commission take into account the special circumstances of how Hurricane Maria devasted the local telecom infrastructure, as well as the local economy, into its consideration of the UST petition and whether such deregulation should occur at this time in Puerto Rico?**

Response: I believe the FCC should consider the unique issues affecting Puerto Rico as part of its policymaking. To this end, I believe it is important to note that the FCC's most recent Broadband Deployment Report acknowledges that the agency "remain[s] uncertain as to the current deployment of broadband services in these areas given the damage to infrastructure in Puerto Rico and the U.S. Virgin Islands from Hurricanes Maria and Irma in 2017."

4. **The Telecommunications Act of 1996 did not preempt local regulatory bodies from the Commission's evaluation of whether a market was competitive or not and thus warranted certain regulatory relief.**

    a. **Will you give deference to the input from the local jurisdictions as to whether the local market conditions warrant deregulation at this time, particularly in the case Puerto Rico where the recovery efforts are still ongoing?**

Response: Because a grant of forbearance necessarily limits the application of both federal as well as state enforcement, I believe it is important for the FCC to fully consider input from local jurisdictions as part of its analysis.

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The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Tony Cárdenas (D-CA)

1. **I recently wrote a letter to the FCC regarding the deployment of mid-band spectrum – specifically the C-band – for 5G services. I believe this spectrum could help accelerate the introduction of next-generation wireless services to communities across the country. Accordingly, I believe that any attempt to reallocate mid-band spectrum for 5G use should seek to maximize the amount of mid-band spectrum that is ultimately made available. I also believe that during any reallocation, the important programs that consumers in my district use for local news, weather, and entertainment should be protected.**

   My understanding is that a public auction involving the C-band spectrum would likely result in both a fair, open and transparent process, as well as substantially more mid-band spectrum being made available for 5G than the privately-managed spectrum sale. While the market is adept at handling certain things, the FCC's oversight of this limited resource will ensure that any reallocation happens in a way that gives access to all Americans.

   a. **Will the FCC commit to a fair, open and transparent FCC-led process -- consistent with Section 309(j) of the Communications Act -- for the reallocation of C-band spectrum for next-generation wireless services?**

Response: The Chairman has the authority to determine, in the first instance, what process to use to reallocate the C-band. However, I agree that any reallocation of C-band spectrum should be accomplished in a fair, open, and transparent process that fulfills all of our obligations under the Communications Act. I believe the FCC should work closely with Congress on the best mechanism to accomplish this goal.

2. **In 2004, 2011, and 2016, the Third Circuit instructed the Commission to perform the relevant analysis necessary to conduct a thorough and informed review of its ownership diversity policies and the impact from changes thereto. Yet still the Commission has failed to study the impact of its rules on ownership by women and people of color, and now in the quadrennial review NPRM proposes possible further relaxation of its rules without such analysis, flagrantly disregarding the Court's explicit mandate.**

   a. **Why has the commission still failed to undertake the required research?**

Response: Media ownership matters. What we see and hear says so much about who we are as individuals, as communities, and as a Nation. But we know that today the ownership of media properties does not reflect the full diversity of the country. That is why I believe the FCC's

failure to provide an honest assessment of how our rule changes have increased consolidation and decreased the diversity of ownership is a problem. Moreover, the Third Circuit Court of Appeals has repeatedly criticized the FCC for falling short in its efforts to address this issue in its quadrennial review of media ownership rules. To this end, just last week this court heard oral argument in what is the fourth legal challenge before it concerning the FCC's media ownership rules. At issue was the agency's failure to consider how rolling back our media ownership policies would impact women and people of color. This court has repeatedly directed the agency to get better data on media ownership and diversity and I expect in its upcoming decision it will make clear yet again that we still have work to do.

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The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Darren Soto (D-FL)

1. **Late last year, the FCC initiated a proceeding looking at how to mitigate space debris. While I think it is a positive step to consider how to address this problem, the Commission may not have the technical expertise or the resources necessary to develop or enforce the complicated regulations it is considering proposing. Further, I understand the FCC has requested a reduced budget for these activities in FY20.**

    a. **Do you agree that it is important to ensure that any orbital debris mitigation regime be straightforward and enforceable?**

Response: Yes. In the past year the FCC has approved over 13,000 new satellites for launch. There's a lot of good that can come from all this new activity in the atmosphere. But increasing the number of satellites in orbit like this brings new challenges. Chief among them is that the growing amount of debris in orbit could make some regions of space unusable for decades to come. That should concern all of us—because junking up our far altitudes now will constrain our ability to innovate, connect, and advance satellite systems in the future.

That's why last year I called for the FCC to do more than rely on our decade-and-a-half old orbital debris rules for next-generation satellite constellations. To this end, on November 15, 2018, the FCC adopted a rulemaking to consider the need for updated rules. I believe any new rules should be straightforward and enforceable. Moreover, I believe they need to feature three clear policies. First, everything that goes up in space should be trackable. We need to understand where all our satellites are and where debris is with a high degree of precision. This requires the FCC to work with its federal colleagues to improve methods to assess what is truly in orbit. Second, everything we put up in space should be drivable. This means satellites can avoid existing orbital debris that might come their way or de-orbit at the end of mission. Third and finally, what goes up must come down. We need clear policies for how satellites will be taken out of orbit as soon as they have completed their missions in space in order to help prevent collisions in the future.

Comments on this rulemaking were filed on April 5, 2019 and reply comments were filed on May 6, 2019. Accordingly, I believe it is time for the FCC to work with its federal partners and adopt clear and enforceable new rules—sooner rather than later.

    b. **Please provide me with the number of employees supporting this project in total and the number of employees on this project with undergraduate or graduate degrees in relevant technical fields, specifically: aerospace, aeronautical, and/or astronautical engineering. Given the reduced budget**

you are requesting for FY20, is the FCC able to hire additional technical experts with degrees in these fields?

Response: The Chairman is uniquely situated to provide these numbers. However, I believe that with the rapidly growing pace of small satellite launch and technology, it would be prudent to increase our budget in order to ensure we have the resources we need. To this end, on April 6, 2019, I testified before the United States House of Representatives Committee on Appropriations, Subcommittee on Financial Services and General Government and specifically noted that the budget request for the FCC from the Administration fell short of what the agency needed, as communications technologies evolve and grow more critical in every aspect of civic and commercial life.

2. **What is the FCC currently doing to ensure that minority programmers are being included by providers; especially in Metropolitan Statistical Areas (MSA) with large minority communities that are currently being underserved?**

Response: Not enough. On September 29, 2016, the FCC adopted a rulemaking seeking comment on specific efforts to increase diversity and independent programming. It asked about carriage agreements programmers now sign to get on cable and satellite systems. It also sought comment on the operation of certain clauses in those agreements known as unconditional most favored nation provisions and alternative distribution method provisions. In practice, the FCC found—at least several years ago—that these clauses can make it tough for new and diverse programming to get on the channel line-up of cable and satellite systems. The FCC should refresh the record in this proceeding as a first step toward addressing what you note here: the prospect of markets with large minority communities that are currently being underserved.

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The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Robert E. Latta (R-OH)

1. **My concern is about how we deliver broadband to all Americans, especially unserved and underserved Rural America. One technology will not be the panacea for this challenge, but we will need a combination of solutions. Can you comment on what role you see spectrum playing in rural America and discuss if you think spectrum sharing is a feasible part of that solution?**

Response: Our airwaves may be invisible, but they are some of the most important infrastructure we have. With the right policies in place, they can help us close the digital divide and deliver broadband service to all Americans. To do so, it is essential that the FCC think about the potential for deployment in rural areas at the start of every spectrum auction and structure license size and build-out obligations in a manner that increases the incentives for carriers to deploy service to remote communities.

In addition, spectrum sharing can help with service in rural areas by increasing the range of airwaves available and improving the economics of deployment. The FCC's most significant on-going effort involving spectrum sharing involves the 3.5 GHz band. In this band, the FCC took 150 megahertz of spectrum and opened it up to a mix of government, licensed, and unlicensed uses. Then we proposed a spectrum access database to dynamically manage these different kinds of wireless traffic. This multi-tiered approach to spectrum access is unprecedented and creative, combining vertical and horizontal sharing in the same band for the first time. I believe that the FCC should begin the auction of this special mix of airwaves later this year.

I do, however, regret that during the last year the FCC—over my objection—increased the size of the licenses available in the 3.5 GHz band. I worry that this will reduce interest in the auction from non-traditional bidders and smaller providers, decreasing the likelihood that these licenses will be especially useful for deployment in rural communities.

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The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Greg Walden (R-OR)

1. **Would you support the Chairman's effort to move forward in evaluating appropriate allocation of the 5.9 GHz band at this time? Why or why not?**

Response: Yes. I support the Chairman's effort to move forward with a fair assessment of the allocation of the 5.9 GHz band.

Twenty years ago, the FCC set aside 75 megahertz of spectrum in the 5.9 GHz band for dedicated short range communications, or DSRC. DSRC was designed for cars to talk to each other in real time and help reduce accidents. But in the two decades since the FCC allocated this spectrum, the deployment of this technology has been extremely limited. Now, autonomous vehicles have moved beyond DSRC to get around and communicate using a mix of radar, LIDAR, cameras, on-board mapping tools, and cellular networks.

I believe we should support automobile safety efforts. However, our spectrum policies concerning safety need to be current. So it is time to take a fresh look at this band and see if we can update our commitment to safety and also develop more unlicensed opportunities for Wi-Fi in these airwaves. I believe it is possible to do so in a fair and open-minded rulemaking. I sincerely hope that the FCC is able to adopt such a rulemaking without further delay.

Attachment—Additional Questions for the Record

The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable John Shimkus (R-IL)

1. **Under the FCC's oversight, the Universal Service Administrative Company (USA) has worked to establish a "National Verifier" system to combat fraud in the Lifeline program by ensuring all applicants are eligible for Lifeline benefits. It is my understanding USAC is actively transitioning many states from "soft-launch" status, in which participation in the National Verifier system is voluntary, to a mandatory verification system. I want to ensure that we expeditiously continue this transition to a more secure and accurate verification system. Please describe how the FCC, working with USAC, will continue the push for implementation of a robust mandatory National Verifier system.**

Response: I share your interest in seeing a timely and successful launch of the National Verifier. To date, the National Verifier has been hard-launched in 22 states, 4 territories and the District of Columbia. In addition, on June 17, 2019, the FCC's Wireline Competition Bureau announced the soft launch of the National Verifier will take place in an additional 11 states on June 25, 2019. However, the launch has been uneven. In many states the National Verifier does not have access to the full set of databases that determine program eligibility. As a result, the National Verifier, as presently developed, requires additional work to ensure proper program administration and accountability. To remedy this situation, the FCC should work with USAC to honestly assess the present and future capabilities of this system. In addition, the FCC should publish a timeline for updating and enhancing the additional databases it expects to incorporate and detailing any others for which it lacks access.

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The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

The Honorable Susan W. Brooks (R-IN)

1. **I firmly believe that letting the private sector compete is the best way to ensure the U.S. will be the world leader in 5G technology. Can you address criticisms of that idea and the notion that the U.S. should nationalize a wholesale 5G network to somehow ensure its leadership in this space?**

Response: I believe proposals to nationalize a wholesale 5G network diagnose the right problem—the need to lead in 5G technology—but offer the wrong solution. For starters, it is not clear what spectrum exists that would support such a proposal. In addition, it is not clear how the government could quickly construct a full national network when private carriers already have their own 5G network deployment well underway. Finally, I believe the United States led the world in the deployment of 4G networks with policies that promoted competition and private sector investment. I believe we need to recommit to these policies with the deployment of 5G service rather than abandon them in favor of a single, nationalized network.