

**Attachment—Additional Questions for the Record**

**Subcommittee on Communications and Technology  
Hearing on  
“Repurposing the C-Band to Benefit all Americans”  
October 29, 2019**

**Ms. Deborah Collier, Director of Technology and Telecommunications Policy,  
Citizens Against Government Waste**

**The Honorable Adam Kinzinger (R-IL)**

1. Ms. Collier, you state in your testimony that “only the FCC may legally conduct any auction of publicly-held spectrum.” But I would venture to guess that you have been hearing the same things that members of this Committee have been hearing about what a final proposal may look like. The FCC is almost certainly not going to rubber-stamp the C-Band Alliance proposal—or any proposal for that matter.

**Given that Section 309(j)(6)(E) of the Communications Act provides that “nothing in this subsection...relieves the Commission of the obligation in the public interest to...use engineering solutions, negotiation...and other means,”:**

- a. **How would a “hybrid” mechanism in which the FCC sets the terms and carefully oversees the process be illegal?**

**Response:** As Congress is aware and as noted in my testimony, proposals for the c-band spectrum have been offered by various organizations and corporations, including the C-Band Alliance, who are potential bidders or existing incumbents using the spectrum for transmission of data signals between satellites and fixed earth stations. Citizens Against Government Waste (CAGW) had long been opposed to a private sale of this spectrum and was therefore pleased with Federal Communications Commission (FCC) Chairman Ajit Pai’s announcement on November 19, 2019 that the FCC would be voting in early 2020 to approve an order to conduct a public auction of the spectrum within this band, with comments being sought on the auction procedures.

Under Section 309(j)(6) of the Communications Act of 1934, “Rules of Construction,” the FCC cannot abdicate its responsibility in conducting an auction of publicly-held spectrum to protect the public interest. Section 309(j)(6)(E) specifies that nothing in this subsection, or in the use of competitive bidding, shall “be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing procedures.” Nothing in this section suggests that the FCC has the ability under current law to contract with a third party to auction taxpayer-owned, publicly-held spectrum.

Section 309(j)(3) sets forth the FCC's regulatory authority for designating the design of a system of competitive bidding for publicly-owned spectrum licenses to be auctioned by the FCC. This section requires the FCC to ensure that safeguards are included in the process that promote the following objectives: "(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative law judge delays; (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women; (C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and (D) efficient and intensive use of the electromagnetic spectrum."

The hybrid solution discussed in news reports surrounding this portion of spectrum, as well as legislative proposals like Rep. Doris Matsui's (D-Calif.) bill, H.R. 4171, suggest that the FCC should have the authority to designate an agent to act on its behalf in auctioning publicly-held spectrum. If Congress deems this to be in the best interest of the American people, then the Communications Act of 1934 must be amended to give the agency the option to provide an ancillary oversight role in the spectrum auction process and a third-party contractor to conduct some or all auctions. This would subvert the very successful public auction process conducted since 1994 by the FCC, which has garnered more than \$120 billion in revenues to the Treasury.

Should Congress decide to take this route for repurposing and auctioning licensed spectrum for c-band and other proceedings, there should be strong guardrails against conflicts of interest for the third-party designee that may arise within the bidding process. This would include a prohibition on designating as the third-party auction contractor incumbent users or potential license bidders that have a vested interest in the sale of the spectrum licenses to be auctioned.

As I noted in my testimony, incumbent users of this spectrum band should be reimbursed for their transition costs. However, as affirmed during questions and answers by the full FCC panel at the Energy and Commerce Committee's December 5, 2019 hearing on "Accountability and Oversight of the Federal Communications Commission," all proceeds from an FCC-conducted auction must be deposited into the Treasury, and any reimbursement for relocation costs or other uses from the proceeds must be authorized by Congress. But, given the FCC's decision to move forward with a public auction, it appears the hybrid solution is moot.