



MEMORANDUM

December 2, 2019

To: Subcommittee on Communications and Technology Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Accountability and Oversight of the Federal Communications Commission”

On **Thursday, December 5, 2019, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing entitled, “Accountability and Oversight of the Federal Communications Commission.”

I. KEY FCC ISSUES AND PROCEEDINGS

A. Spectrum

The Federal Communications Commission (FCC) is considering several spectrum bands for licensed wireless broadband services or unlicensed use. In the mid-band, the FCC is focused on five bands: The Educational Broadband Service (EBS) 2.5 GHz; the Citizens Broadband Radio Service (CBRS) 3.5 GHz; the 5.9 GHz band; the 6 GHz band; and the C-Band 3.7 - 4.2 GHz band.

Regarding the EBS band, the FCC adopted a Report and Order in July, announcing new opportunities for entities to obtain unused spectrum for next generation wireless broadband, including 5G.¹ The Commission also adopted a priority application filing window for native tribes and tribal organizations.² The Commission is expected to auction the remaining unused EBS spectrum in 2020.³

¹ Federal Communications Commission, *In the Matter of Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019).

² *Id.* at para. 47.

³ Randy Sukow, *Commission Aims for 2020 Auction to Open Mid-band 2.5 GHz for 5G*, NRTC (Jul. 10, 2019), (www.nrtc.coop/rural-connect/commission-aims-for-2020-auction-to-open-mid-band-2.5-ghz-for-5g).

Regarding the CBRS band, the FCC last year released an order adopting certain changes to the rules governing Priority Access Licenses (PALs) that will be issued in the band.⁴ The first auction of PALs is expected to begin in June 2020.⁵

The FCC sought comment on expanding unlicensed use in the 6 GHz band in a Notice of Proposed Rulemaking (NPRM) adopted in October 2018.⁶

The FCC has announced its intention to consider at the December 12, 2019 open meeting a NPRM that would consider a rule for the 5.9 GHz band. As part of its proposal, 45 MHz of the lower band would be allocated for unlicensed operations and the upper 30 MHz of the band would be reserved for Intelligent Transportation Systems, including 20 MHz for cellular vehicle-to-everything (C-V2X) operations.⁷

Last July, the FCC released an Order and NPRM regarding the C-band, in which the FCC stated its intention to transition some or all of the band from satellite to terrestrial wireless broadband use.⁸ Earlier in the year, the FCC released a public notice seeking comment on its legal authority to employ different elements of the clearing mechanisms that it had suggested in the Order and NPRM.⁹ FCC Chairman Pai recently announced that the FCC would pursue plans to conduct a public auction of C-band spectrum in 2020.¹⁰

⁴ Federal Communications Commission, *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598 (2018).

⁵ Federal Communications Commission, *Auction of Priority Access Licenses for the 3550-3650 MHz Band*, Comment Sought on Competitive Bidding Procedures for Auction 105, Public Notice, AU Docket No. 19-244 (Sept. 27, 2019).

⁶ Federal Communications Commission, *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Proposed Rulemaking, 33 FCC Rcd 10496 (2018).

⁷ Federal Communications Commission, draft *Notice of Proposed Rulemaking*, ET Socket No. 19-138, (<https://docs.fcc.gov/public/attachments/DOC-360940A1.pdf>).

⁸ Federal Communications Commission, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 6915 (2018).

⁹ Federal Communications Commission, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, International Bureau and Wireless Telecommunications Bureau Seek Focused Additional Comment in 3.7-4.2 GHz Band Proceeding, Public Notice, 34 FCC Rcd 2904 (2019).

¹⁰ Letter from Ajit V. Pai, FCC Chairman, to Roger Wicker, Senate Committee on Commerce, Science, and Transportation Chairman (Nov. 18, 2019).

B. Public Safety and Security

i. Network Resiliency

In May, the FCC released a report reviewing the response to Hurricane Michael, finding that inadequate reciprocal roaming agreements, lack of coordination between wireless service providers, power crews and municipalities, and insufficiently resilient backhaul connectivity were to blame for some of the outages related to that storm.¹¹

ii. Security

At the FCC's November 2019 Open Meeting, the Commission unanimously adopted a Report and Order, Order, and Further Notice of Proposed Rulemaking (FNPRM) to prohibit the use of universal service funds to purchase equipment or services from providers identified as posing a national security risk to communications networks or the communications supply chain.¹²

C. Lifeline

In 2017, the FCC proposed a drastic contraction of the Lifeline program, including removing non-facilities-based carriers from the Lifeline program, which would reduce the Lifeline program by more than 70 percent.¹³ A similar proposal to severely restrict the Tribal Lifeline Benefit was struck down in February of this year by the D.C. Circuit Court of Appeals.¹⁴ Since then, the FCC has abandoned its approach to remove all non-facilities-based carriers from the program, yet it has recently acted in other ways to shrink the program.¹⁵

Changes to the Lifeline program designed to improve efficiency and prevent fraud have been implemented in ways that make it more difficult for potential Lifeline participants. For

¹¹ Federal Communications Commission, *October 2018 Hurricane Michael's Impact on Communications: Preparation, Effect, and Recovery*, Report and Recommendations, PS Docket No. 18-339 (May 9, 2019).

¹² Federal Communications Commission, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Report and Order, Order, and Further Notice of Proposed Rulemaking, WC Docket No. 18-89.

¹³ See Federal Communications Commission, *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, Report and Order and Second Notice of Proposed Rulemaking, 34 FCC Rcd 7505, at ¶ 10 (2019).

¹⁴ See Federal Communications Commission, *Bridging the Digital Divide for Low-Income Consumers*, Notice of Proposed Rulemaking, 32 FCC Rcd 10475, at ¶ 63 (2017).

¹⁵ *Nat'l Lifeline Ass'n v. FCC*, No. 18-1026, slip op. at 3 (D.C. Cir. 2019).

example, the Lifeline National Eligibility Verifier (Verifier), an electronic system to assist carriers in determining whether consumers are eligible for the Lifeline program, has been rolled out without full access to databases of eligible individuals. As a result, carriers seeking to provide service to such individuals are unable to use the Verifier and must use a more onerous process that may deter participation in the program. Since 2017, one organization estimates nearly 2.3 million Americans have lost access to Lifeline since 2017.¹⁶

D. Privacy

Reports surfaced in May 2018 indicating that wireless carriers were disclosing consumers' real-time location data to third-party data aggregators, which were then selling location-based services to a wide variety of companies.¹⁷ A series of subsequent reports detailed how widely this location data was shared, and the ease with which anyone could obtain that information from private companies.¹⁸ In April 2019, FCC Chairman Pai stated publicly that the Enforcement Bureau is investigating the issue.¹⁹ In June 2019, several public interest organizations filed a complaint against the four major wireless carriers asserting that their sharing of customer location data violated sections 222 and 201(b) of the Communications Act of 1934, as amended.²⁰ To date, the FCC has taken no public action on the matter.

¹⁶ Millions of Poor Lose Access to Cellphone Service Under Trump Administration Reforms, Center for Public Integrity (Nov. 7, 2019) (www.usatoday.com/story/news/investigations/2019/11/05/under-trump-millions-poor-lose-cellphone-service/2482112001/).

¹⁷ See, e.g., Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, New York Times (May 10, 2018).

¹⁸ Joseph Cox, *Stalkers and Debt Collectors Impersonate Cops to Trick Big Telecom Into Giving them Cell Phone Location Data*, Motherboard (Mar. 6, 2019), (www.motherboard.vice.com/en_us/article/panvkz/stalkers-debt-collectors-bounty-hunters-impersonate-cops-phone-location-data); Joseph Cox, *Hundreds of Bounty Hunters Had Access to AT&T, T-Mobile, and Sprint Customer Location Data for Years*, Motherboard (Feb. 6, 2019), (motherboard.vice.com/en_us/article/43z3dn/hundreds-bounty-hunters-att-tmobile-sprint-customer-location-data-years); Joseph Cox, *I Gave a Bounty Hunter \$300. Then He Located Our Phone*, Motherboard (Jan. 8, 2019), (www.motherboard.vice.com/en_us/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-microbilt-zumigo-tmobile).

¹⁹ John Eggerton, *Pai to Hill: FCC is Not Delaying Geolocation Data Investigation*, Broadcasting and Cable (April 4, 2019), (www.broadcastingcable.com/news/pai-to-hill-fcc-is-not-delaying-geolocation-data-investigation).

²⁰ Informal Complaint for the Unauthorized Disclosure and Sale of Customer Location Information by Georgetown Law Center on Privacy & Technology, New America's Open Technology Institute and Free Press (June 14, 2019) (https://newamericadotorg.s3.amazonaws.com/documents/Informal_Complaint_re_Unauthorized_Disclosure.pdf).

E. Media Ownership

i. Quadrennial Review

Since 2017, the FCC has completed several rulemakings rolling back media-related protections for consumers and local communities, including rescinding the “eight voices” test and allowing the discretionary waiver of the prohibition of a broadcaster owning two of the top four stations in a market.²¹ In September 2019, the Third Circuit in *Prometheus Radio Project v. FCC* struck down and remanded the 2017 deregulatory efforts because the FCC failed to consider the effect the deregulatory measures would have on ownership diversity.²² In November 2019, the Third Circuit denied the FCC’s petition for an *en banc* rehearing.²³

The FCC has not yet completed its 2018 Quadrennial Regulatory Review or opened a proceeding to address the issues remanded by the Third Circuit.

ii. Radio Duplication Rule

In November 2019, the FCC proposed to eliminate the radio duplication rule that prohibits commonly owned radio stations from airing more than 25 percent of their time to duplicative programming when there is a substantial overlap between their stations’ signals.²⁴

iii. Equal Employment Opportunity Obligations

Section 334 of the Communications Act of 1934, as amended, requires the FCC to review employment practices of broadcasters.²⁵ In June 2019, the FCC issued a NPRM seeking comment on how the Commission could improve its Equal Employment Opportunity (EEO) compliance and enforcement.²⁶

²¹ See, e.g., Federal Communications Commission, *Review of the Commission’s Broadcast Ownership Rules*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017); Federal Communications Commission, *National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd 3390 (2017).

²² *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. Sept. 23, 2019).

²³ *Prometheus Radio Project v. FCC*, No. 17-1107 (3d Cir. Nov. 20, 2019).

²⁴ Federal Communications Commission, *Duplication of Programming on Commonly Owned Radio Stations*, Notice of Proposed Rulemaking, FCC 19-122, (Nov. 22, 2019).

²⁵ 47 U.S.C. § 334.

²⁶ Federal Communications Commission, *Equal Employment Opportunity Enforcement*, Notice of Proposed Rulemaking, 34 FCC Rcd 5358 (2019).

iv. Sinclair Investigation

In June 2019, the FCC’s Media Bureau initiated an investigation into the issues of misrepresentation and/or lack of candor raised during the Sinclair-Tribune transaction.²⁷ That investigation remains ongoing.

v. Children’s Television Act of 1990

The FCC proposed last year to eliminate some of its rules implementing the Children’s Television Act of 1990 (CTA), which requires broadcasters to “serve the educational and informational needs of children” through their programming.²⁸ On July 10, 2019, the FCC loosened the obligations established under the CTA and sought further comment on other changes to the rules.²⁹

II. WITNESSES

The following witnesses have been invited to testify:

The Honorable Ajit Pai
Chairman
Federal Communications Commission

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission

The Honorable Brendan Carr
Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission

The Honorable Geoffrey Starks
Commissioner
Federal Communications Commission

²⁷ Letter from Barbara Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission, to David Gibber, Senior Vice President/General Counsel, Sinclair Broadcast Group, Inc., MB Docket No. 17-179 (June 25, 2019).

²⁸ Children’s Television Act of 1990, Pub. L. No. 101-437.

²⁹ Federal Communications Commission, *Children’s Television Programming Rules*, Report and Order and Notice of Proposed Rulemaking, 34 FCC Rcd 5822 (2019).