

Attachment—Additional Questions for the Record

**Subcommittee on Communications and Technology
Hearing on
“The Fiscal Year 2025 Federal Communications Commission Agency Budget”
July 9, 2024**

The Honorable Nathan Simington, Commissioner, Federal Communications Commission

The Honorable Earl L. “Buddy” Carter

1. The relationship between landlords and tenants historically has been a state-law issue. It seems far removed from the FCC's core mission. Does the FCC have jurisdiction to regulate the contractual relationship between landlords and tenant, including agreements regarding the provision of broadband services provided to their tenants as a building amenity?

RESPONSE: The FCC lacks the authority to regulate any relationship between a landlord and tenant, a property manager and tenant, or within a homeowners’ association, which is why Commission leadership is attempting instead to prohibit “bulk billing” arrangements between internet service providers (ISPs) and any organizations that manage multi-tenant or multi-owner environments (be they, for instance, a homeowners’ association or property manager on the one hand, or a multifamily landlord on the other). As it happens, we also probably lack the authority to accomplish what Commission leadership has proposed; I am skeptical that any of the proposed authority cited supports the Commission’s attempt to restrict arrangements between ISPs and landlords, HOAs, or property managers. Had we the authority, the developing record reflects that our approach is likely to harm consumer welfare, in that consumers are likely to pay higher broadband prices in order to claim a Pyrrhic victory for “consumer choice.” I do not believe that any serious society group advocate even denies that prices are likely to tick up for multi-tenant environments previously in bulk billing arrangements. It is just that the advocates, imagining themselves in that position, prefer to have a direct choice among ISPs and could live with double the cost to have that choice. That is not the bargain that many Americans prefer to strike, nor the one that many Americans can afford to strike. The record from the *rest* of the country, rather than advocacy from the counties surrounding the DC metro area, reflects that reality.

2. The Commission previously has repeatedly reviewed broadband bulk billing arrangements and determined each time that their benefits exceed any potential downsides. Would the Commission's decision to reverse this decision without first developing an administrative record to support the opposite conclusion open the Commission to substantial legal scrutiny as a decision that is arbitrary and capricious under the Administrative Procedure Act?

RESPONSE: Absolutely, yes. And indeed, in a post-*Chevron* world, regulatory modesty must become a lodestar for the Commission. Tabling for the moment that the Commission would

almost certainly need a “tie goes to the agency” rule of deference to survive any legal challenge to a final order in this proceeding, advocates from around the country have made it clear that they will *flood* the record with evidence about the advantages of bulk billing for consumers. To enact policy that flies in the face of overwhelming evidence and recent well-founded Commission precedent is what the phrase “arbitrary and capricious” exists to describe.

The Honorable Rick Allen

1. With the digital transformation that many- really, all - sectors of our society are undergoing, there are increasing and expanding interdependencies between the communications sector and a host of other sectors. I want to focus on interdependencies with one critical sector - the electric sector. The electric grid is becoming increasingly distributed, connected, and automated, and utilities are deploying a growing number of wireless communications devices onto their grids to improve resiliency and redundancy, incorporate distributed and intermittent generation resources, and ensure asset security. This digital transformation brings with it increasing and expanding interdependencies between electric grids and communications networks. In the past, we've been concerned with a hurricane damaging the electric grid, limiting the flow of electricity to commercial communications networks. Now, if a cyber-attack compromises a communications network, that compromise could interfere with the electric grid, if grid communications devices are riding on it. Given how essential the safe and reliable flow of electricity is to modern life, we should assist electric utilities in avoiding compromised technologies and third-party networks that may already contain vulnerable technologies, could easily be compromised by vulnerable technologies, or may have other cyber weaknesses, in order to maintain the security and integrity of the electric grid. Providing utilities direct access to spectrum that they can use to operate, maintain, and control their own wireless broadband networks -from the network components themselves to the devices that operate on them - is a solution that we should strongly consider. In other words, utility access to spectrum is essential. Why is the spectrum policy discussion so focused on commercial networks, commercial services, unlicensed use and consumer needs, to the exclusion of critical infrastructure needs, and what steps can the Commission take to initiate a fuller policy evaluation and development in this regard?

RESPONSE: I share your concerns about the current hyper-commercial focus of spectrum policy, and have vocally expressed these concerns in the context of a number of proceedings. For example, the 6 GHz band is licensed to many utilities via microwave links, but was then allocated for unlicensed use in 2020, in a manner that does not, in my opinion, provide adequate interference protection for the remaining microwave licensees in the band from the unlicensed operations not governed by an automatic frequency coordinator. I have cautioned my FCC colleagues about this potential for interference to incumbent licensees. I have also urged them to consider changes to the FCC rules to help the agency detect and mitigate interference, and to enforce its rules against those who cause harmful interference to licensees in the band.

I have also been a loud proponent of urging industry to use network slicing and other 5G technologies to explore the deployment and development of private networks for both critical infrastructure, manufacturing, mining and other industrial uses. I believe that reliance on WiFi and other unlicensed technologies by the critical infrastructure and manufacturing sectors is also

a cyber and national security risk. I believe that going forward, the FCC can take a number of steps in the context of a spectrum auction, a reallocation of a commercial band, or a merger, to actively consider and add weight to policy proposals that call for industrial and/or critical infrastructure deployment within a given spectrum band. Specifically, by providing incentives to providers who propose to deploy private industrial or critical infrastructure networks on a newly allocated or auctioned band.

Utilities are presently forced to choose between relying on best-efforts commercial networks, using unlicensed spectrum, and engaging in bespoke, private builds that are not at the technological cutting edge. These choices could be avoided if commercial networks could offer utilities a secure, prioritized slice or plane whose uptime, continuity of service, and minimum performance met utility standards, while bringing the benefits of dense, high-performance commercial networks to the utility sector. Nothing in this would prevent utilities from continuing to use their existing private networks or unlicensed spectrum where those options continued to be the best and most appropriate.

Finally, I would like to see the Commission's Cyber Trust Mark program extended to more consumer-facing devices. I think it can and should eventually extend to all Commission regulated devices that touch the internet. Fortunately, the present program already offers valuable tools to utilities that seek to reduce risk to the public. If utilities use this program to demand higher standards across a range of wireless equipment, from smart thermostats to grid operations equipment, they can force vendors to address security concerns ahead of time instead of waiting for a crisis—and to take risk that properly lies with vendors, not with utilities or the public.

While the Cyber Trust Mark program is voluntary, adoption can be further encouraged by requiring equipment vendor participation through the government and private sector procurement processes. Procurement programs could require all eligible equipment to obtain a Cyber Trust Mark. And such programs could also require Cyber Trust Mark-like service-level agreements on all ineligible equipment. Equipment vendors are much better positioned than utilities or the public to design and update secure equipment, and by voluntarily seeking a Cyber Trust Mark, vendors will indicate that they have the same confidence in their equipment that the public has a right to expect in critical infrastructure.

Another avenue for increasing adoption is through the insurance market. Insurers could either require adoption by their clients, or create incentives through discounts, to bolster the creation of a true market in device security. If this new market is developed it could allow insurers to define cyber-risk practices with greater precision, thereby increasing the value and size of the cybersecurity insurance market as a whole. Utilities are forced to take so much risk by buying insecure equipment that opening up a path to procuring better equipment would lower the overall cost to the public, both in money and in dangerous potential disruptions to their lives.

This is of course a very rough, high-level outline of the future of the program that I think would benefit both consumers and industry. Much of this would, of course, evolve over some time and with the natural evolution of industry adoption of the program.

The Honorable August Pfluger

1. This Committee has held two hearings on the video marketplace. One thing that seems clear to me is that consumer demands have changed. They want more flexibility in choosing what they watch, when they watch it, where they watch it, and what they are charged for it. What actions should Congress take to modernize our nation's video laws to allow the marketplace to continue to evolve especially for traditional PayTV providers who are trapped in a decades-old regime? What can the FCC do also to help foster this evolution?

RESPONSE: The Commission, candidly, should be required by Congress to “back off” of as it relates to legacy media providers—broadcasters, MVPDs, and DBS providers. Congress should pass a bill requiring the Commission to massively deregulate legacy media. Take away our toolkit. We have proven we are not to be trusted with it. Broadcasters, MVPDs, and DBS providers will find a path on their own. Or they won’t. I trust consumers to continue to reveal their own preferences for how they want to consume media and how they want to pay for it, and for media marketplace participants to chart a course forward. The worst thing that I can imagine for the future of the media marketplace is for the Commission to be given more knobs with which to fiddle. What can the Commission concretely do? (1) Roll back recent rules that have increased regulatory burden, complexity, and cost for MVPD and DBS providers. (2) Reform its ownership rules in a forthcoming Quadrennial Review. (3) Perform a thoroughgoing review of all of its MVPD/DBS and broadcast rules to rewrite or remove those rules which are superannuated, create inefficiencies, or no longer make sense (if they ever did).

The Honorable Kat Cammack

Many electric, water, and natural gas utilities own and operate mission-critical fixed microwave communications systems in the 6 GHz band. In response to the Commission's recent rulemaking, you expressed concerns about how the Commission dismissed concerns about the potential for harmful interference from certain unlicensed devices. There is an automated frequency coordination database to help coordinate unlicensed operations in the band. AFC system operators have also established an online portal for incumbent licensees to report interference issues. However, it is unclear how AFC system operators will resolve any recorded interference issues with this database.

1. Commissioner Simington, you’ve mentioned in the past that the “Commission could find itself in the position of attempting to police interference fights in a heavily congested environment where it proves difficult, if not impossible, to enforce its rules.” Can you please speak to how the Commission can ensure that interference complaints are effectively resolved in a timely, transparent manner by AFC system operators? How should 6 GHz incumbents effectively report interference issues to the Commission, if AFC system operators do not resolve interference complaints themselves?

RESPONSE: Thank you for this question. By way of clarification, my statement quoted in your question addresses the Commission’s 2023 *Second Report and Order* on the operation of very low-power devices, or VLP devices, in the 6 GHz band. In that Order, the Commission declined to require that unlicensed VLP devices use an AFC system to control spectrum access—and that lack of an AFC for these operations is my principal concern. The AFC systems and online interference reporting database you mention above helps coordinate unlicensed operations in the band for only standard-power unlicensed devices, which were addressed in the FCC’s 2020 *6 GHz Order*. This is why in that same statement I also urged my colleagues to carefully consider, in the upcoming *Second Further Notice*, what additional steps can or should be taken to address the potential for harmful interference from VLP devices.

Under the 2020 *6 GHz Order*, the FCC authorized two different types of unlicensed operations—standard-power (outdoor) and indoor low-power operations. The standard-power access points must use an automated frequency coordination (AFC) system, which consists of several components to determine the specific exclusion zones to protect incumbents. I think these components put in place adequate protections to allow the AFCs to effectively resolve interference in a timely, transparent manner. These components include (1) the framework, design, and operation of the AFC system; (2) the operational requirements for standard-power access points; and (3) the interference protection parameters that protect incumbent fixed service operations. The centralized AFC model allows the FCC to more easily investigate the cause of interference by contacting an AFC system operator and directing it to make corrections promptly. This is, primarily, because AFC system relies on the FCC’s Universal Licensing System (ULS) for fixed microwave link data when calculating and establishing the exclusion zones to protect microwave links from harmful interference. If this same system had been adopted for VLP devices in the 2023 *Second Report and Order*, my concerns would have been alleviated.