



**Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554**

Office of the Director

October 23, 2015

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on July 28, 2015, at the hearing entitled "Continued Oversight of the Federal Communications Commission."

If you have further questions, please contact me at (202) 418-0095.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Dabbs".

Michael Dabbs  
Director

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

Enclosures

## Attachment 1-Additional Questions for the Record

### The Honorable Marsha Blackburn

1. **I signed bi-partisan letters to the FCC in 2013 and May 2015 to stress the importance of wireless microphones to the performing arts and to adopt rules that "preserve the quality and integrity of wireless microphones" as the FCC works to implement spectrum auctions. The FCC agreed to place wireless microphones in the duplex gap between the uplink and downlink pieces of the new 600 MHz band along with unlicensed users.**

**Last month the FCC was planning to vote on an order that would have taken away what little spectrum was going to be made available after the auction for wireless microphones in the new duplex gap by placing a broadcast station there. I appreciate that the Chairman withdrew this order, however I'm curious as to what the current plan is to make sure that wireless microphone users have dedicated spectrum?**

Response: The Commission adopted new rules on August 6, 2015, to address the long-term needs of wireless microphone users by providing for continued access to the 600 MHz band and expanding access to other bands. The new rules specifically will allow all Part 74 licensed microphone users to operate in a 4-megahertz portion of the 600 MHz duplex gap (*i.e.*, broadcasters, cable programming networks, movie studios, and operators at major sporting/concerts/theater venues). The Commission may need to place a broadcaster in the duplex gap in a limited number of markets. However, the Commission sought comment on preserving an additional vacant television channel for use by wireless microphones and white space devices should this occur.

In the May 2014 *Incentive Auction Report and Order*, the Commission adopted rules to implement the Broadcast Television Spectrum Incentive Auction, which will involve reorganizing the existing television band and repurposing a portion of the UHF television band for new wireless broadband services. Until the Incentive Auction is completed and the Commission establishes the final 600 MHz band plan, the impact of repurposing spectrum on wireless microphone users will not be known. The Commission has provided for a multi-year period after the auction during which wireless microphone operators may continue to access the 600 MHz band on a secondary basis. This 39-month period will help smooth the transition as wireless microphone operators obtain new equipment and transition out of the repurposed 600 MHz band to other spectrum, including vacant channels and guard bands in the post-auction 600 MHz band.

On August 6, 2015, the Commission adopted an order amending the Part 15 rules which will allow unlicensed wireless microphone users who do not qualify for a Part 74 license to operate as unlicensed devices in the TV bands and the new 600 MHz service band after the Incentive Auction. Unlicensed wireless microphones, as well as white space devices, will continue to operate on vacant channels in the TV bands on an equal basis and shall not

cause interference to adjacent licensees, although vacant channels may be fewer in number in certain geographic areas. The *Part 15 Report and Order* eliminates the current rule that permits unlicensed microphone users to register with the TVWS Database to reserve vacant TV channels for their use, but this will not occur until 18 months after the effective date of the rule change or no later than the conclusion of the Incentive Auction, whichever comes first. However, after the incentive auction and subsequent repacking of television broadcasters, unlicensed microphone users will be able to operate in the 600 MHz guard bands and duplex gap on a shared basis with white space devices, and they may have exclusive use of portions of the spectrum in the guard bands depending on the amount of spectrum recovered in the Incentive Auction.

### **The Honorable Renee Ellmers**

- 1. Chairman Wheeler, you have proposed changes to the Lifeline program to allow eligible recipients to receive a subsidy for broadband access. I have to assume that before you make such a proposal that you have an idea of how much of an impact there will be on the fund. Do you know? Could you tell us?**
  - A. Where will this money come from?**
  - B. Will reforms cover it all?**
  - C. Since all the other universal service programs are capped wouldn't it be prudent to cap the Lifeline fund?**

Response: As the agency charged by Congress to implement rules to preserve and advance universal service, it is important that the Commission responsibly and effectively administer the resources that are contributed by ratepayers through the universal service contribution mechanisms. This requires both achieving the goal of providing low-income households meaningful access to telecommunications services and also minimizing the necessary contributions from consumers and businesses. In the Commission's 2012 Lifeline Reform Order, the Commission established clear goals and committed itself to: (1) ensuring the availability of voice service for low-income Americans; (2) ensuring the availability of broadband service for low-income Americans; and (3) minimizing the contribution burden on consumers and businesses.<sup>1</sup> In that Order, the Commission also implemented several important reforms to eliminate waste, fraud, and abuse by setting a savings target, creating a National Lifeline Accountability Database (NLAD) to prevent multiple carriers from receiving support for the same household, and confirming a one-per-household rule applicable to all consumers and providers in the program. Due to the reforms adopted in the 2012 Order, Lifeline disbursements fell 24 percent in two years and

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6671, para. 25 (2012).

have continued to decline, resulting in \$600 million less in disbursements in 2014 compared to 2012.

The Commission's pending Further Notice of Proposed Rulemaking on Lifeline released in June 2015 seeks comment on a budget for the Lifeline program to ensure the program continues to meet its goals, including minimizing ratepayers' contribution burden, while allowing the Commission to take into account the unique nature of the Lifeline program. The Further Notice seeks comment on a number of important implementation questions, such as the level at which any budget should be set and how the Commission can monitor and forecast demand for the program. In addition to seeking comment on the Lifeline program's finances, the Commission sought comment on ways to further reduce any incentive for waste, fraud, and abuse by having a third party, instead of service providers, determine whether consumers are eligible for Lifeline.

The Commission has already received comments from a number of stakeholders providing a variety of perspectives on how the Commission can best manage the Lifeline program's finances. The Commission continues to receive public comment on its Further Notice of Proposed Rulemaking and will consider all of the input it receives as the Commission develops final rules to modernize the Lifeline program in a way that is careful to minimize the burden on ratepayers.

**2. Chairman Wheeler, you recently formed another task force to address FCC Reform. Do you have a sense when we will see that Task Force's recommendations?**

Response: The Task Force that you mentioned was formed specifically to address the concerns of Commissioner offices related to internal processes and procedures. As I noted in my May 14, 2015, letter to Chairman Walden and Ranking member Eshoo, the task force is developing recommendations for proposed changes in processes relating to in the areas of transparency, rulemaking, and delegated authority here at the FCC. Topics being reviewed and considered include, but have not been limited to: (a) the use of delegated authority, and practices for providing notice of matters being handled on delegated authority; (b) procedures for pre-vote circulation of Commission-level matters; (c) procedures associated with editorial privileges after adoption of an item; (d) practices to encourage efficient Commission decision-making, such as the Consent Agenda; (e) approaches for providing increased transparency of FCC procedures and protocols; and (f) practices to track, disclose and encourage prompt Commissioner votes on items on circulation.

The Task Force has been meeting to discuss these issues, and I expect will propose a package of potential reforms to the Commissioners in the near future. I will keep the Committee apprised of our ongoing work in this area.

3. **Chairman Wheeler, I believe that in the past you committed to disclose the FCC's Freedom Of Information Act- (FOIA) logs by October 1st 2014 and start requiring publication of all FOIA decisions by the same date. I believe these were also the recommendations in the staff reform report to improve transparency at the FCC. The purpose of such disclosure would be to allow the public to determine the status of pending FOIA requests at the agency as well as the outcome of requests. Have you executed on your commitment to disclose the logs and publicizing all FOIA decisions? If so, when did the FCC begin such disclosures? Where on the FCC website can the public find this information? I know you post a report summarizing certain FOIA related activities but it does not appear the logs and decisions are available. If that remains to be the case, please explain when the FCC will begin disclosing the logs and decisions.**

Response: The Federal Communications Commission (FCC) complies with the Freedom of Information Act (FOIA), as well as President Obama's FOIA Memorandum, Attorney General Holder's FOIA Guidelines, and Department of Justice Office of Information Policy's (DOJ/OIP) FOIA Guidance. The FCC maintains a FOIA page on its public website (<https://www.fcc.gov/foia>) that provides citizens with extensive information about the FOIA process and that publishes the FCC's Quarterly, Annual, and Chief FOIA Officer Reports. These reports provide a detailed analysis of how the FCC processes the more than 700 FOIA requests it receives each year. The FCC's public FOIA web page also includes links to all of the agency's Commission-level FOIA decisions and a tool that allows the public to compare the FCC's FOIA processing to that of other agencies.

To make it easier for citizens to engage in the FOIA process, in early 2015, the FCC joined the multi-agency FOIA online system, which allows requesters to place their requests and check the status of their requests online. The FCC currently allows requesters to check the status of their own requests, but not those of other requesters.

On July 10, 2010, the DOJ OIP announced a six-month FOIA proactive disclosure pilot program, during which seven participating federal agencies will post their FOIA responses online, so that they are available not just to the FOIA requester, but also to the general public. The purpose of this pilot is to assess how a "release to one, release to all" FOIA policy would impact agency operations, privacy interests, and non-government stakeholders. For example, some journalists have expressed concern that this policy would make it difficult to write "exclusive" stories about agency materials they have obtained through the FOIA process. The FCC is not participating in this pilot program, but is closely monitoring it and will consider its results.

**The Honorable Chris Collins**

- 1. You have suggested in previous hearings that undoing forbearance decisions is a difficult task. Are you or your staff currently considering undoing any existing forbearance decisions? For example previous forbearance decisions related to special access?**

Response: The Commission has received a petition from a group of industry associations and competitive carriers to reverse the forbearance granted to several ILECs from the application of certain dominant carrier regulations and Computer Inquiry requirements for certain enterprise broadband services. The Commission has also received a petition from a similar group to reverse the forbearance deemed granted to Verizon through operation of law. The Wireline Competition Bureau sought comment on those petitions, and they are currently pending.

**The Honorable Anna Eshoo**

- 1. As you know, experts from the tech community contend that three channels are at a minimum needed in the 600 MHz band to stimulate and sustain investment in enhanced Wi-Fi.
  - A. Can you commit that the FCC will identify within this band at least 3 channels in every market nationwide for unlicensed use?****

Response: From the outset of our work to implement the world's first incentive auction, a central goal has been to maximize the amount of spectrum made available for not only licensed use, but also unlicensed use nationwide. To that end, we have sought to provide three channels for unlicensed use by authorizing such use in the duplex gap and guard bands in the repurposed 600 MHz Band and on Channel 37, as well as proposing to preserve a vacant channel in the post-auction TV band for unlicensed use (and a second vacant channel in areas where a broadcast station is assigned to the duplex gap). We have recently taken steps to move forward on each of these elements. Earlier this year, the Commission adopted the *Incentive Auction Second Order on Reconsideration*, which, in part, affirmed the Commission's decision to permit unlicensed use in the 600 MHz guard bands and duplex gap and Channel 37. In August 2015, the Commission adopted technical rules for the operation of unlicensed devices in the duplex gap, guard bands, and Channel 37 that will create certainty for unlicensed device users and manufacturers while protecting licensed users and medical devices against harmful interference. We are currently reviewing the comments filed in response to the vacant channel proposal and hope to take final action on them later this year. Taken together, I believe our efforts will ensure that unlicensed spectrum will continue to be a driving force for innovation, investment, and economic growth.

2. As you know, today approximately two-thirds of the highly desirable spectrum below 1 GHz is held by the two largest wireless carriers.

A. Will you consider the incentive auction a success if it furthers the concentration of low-band spectrum among these two providers?

Response: The Incentive Auction offers an opportunity, possibly the last for years to come, for wireless providers to acquire low-band spectrum in significant quantities. Given the current asymmetries in holdings of low-band spectrum by wireless providers, one of our main priorities for the Incentive Auction has been to ensure that all providers have a meaningful opportunity to access this spectrum, which I believe is critical to facilitate a competitive marketplace. Towards this goal, the Commission adopted a groundbreaking “market based reserve” that designates up to 30 MHz of spectrum for eligible bidders on a market-by-market basis. Non-nationwide providers are eligible for reserve spectrum in every market, while the biggest providers – referred to as nationwide providers – are reserve eligible only in areas where they hold less than one-third of available low band spectrum. The size of this market based reserve reflects a balance among a number of objectives, including making additional low-band spectrum available to multiple providers, ensuring that all bidders have an opportunity to acquire a stake in the 600 MHz ecosystem, and ensuring competitive bidding.

#### **The Honorable Ben Ray Lujan**

**Chairman Wheeler, I know that both of us are committed to addressing the digital divide that plagues so many tribal communities. That is why I have repeatedly expressed to you and to the FCC how important the Office of Native Affairs and Policy is to my constituents since it ensures that tribes have a seat at the table at the FCC.**

1. **Can you discuss the Commission's efforts to ensure robust tribal consultation and meaningful dialogue with tribal stakeholders?**

Response: On July 16, 2015, the Commission submitted to the House and Senate Financial Services and General Government Appropriations Subcommittees a report on the “Implementation of the Federal Communications Commission’s Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes” (“*Report*”). Therein, the Commission provided a complete discussion of historical and ongoing efforts to ensure robust tribal consultations. Specifically, on page 7 of the *Report*, the Commission provided an outline of recent efforts in this regard, followed by substantive and detailed examples of this work:

“The consultation process is critical to the Commission’s efforts to fulfill its government-to-government responsibilities to Tribal Nations, as set forth in the *Tribal Policy Statement*. Robust consultation is necessary to ensure that Tribal Nations are made aware of

opportunities and proceedings at the Commission, as well as to ensure that Native voices are heard and taken into account across the Commission. Working toward these ends, the Commission conducted engagement, consultation, coordination, and training efforts. The Commission also continued to build upon its relationships among Tribal Nations to collaborate and assist on solving the often difficult problems of the digital divide in Indian Country.

Experience has shown that the consultation process is most effective when there is consultation on the ground in Indian Country and when Tribal opportunities are directly infused into all of the Commission's relevant policy making decisions based on direct input from Tribal Nations. The desired outcome is a reinvigorated Tribal consultation process undergirded by a strong, healthy, and collaborative relationship between the FCC and Tribal leaders. As a result, the FCC's approach is to utilize consultation everywhere within the Commission that matters to Tribal Nations and to do so with purposeful objectives. In 2014, the Commission bolstered its Tribal training efforts. Specifically, the Commission launched a more intensive version of its Tribal Broadband, Telecom, and Media Consultation Training Workshops, enhancing the workshops with an innovative Native Learning Lab. In addition, the FCC promoted and facilitated increased participation by Tribal Nations in media ownership by developing programs to expand awareness of and participation in the Tribal Priority for broadcast radio."

Given the size of this *Report* and its prior inclusion in the Appropriations Financial Services Subcommittee Record, the Commission will not submit the *Report* text for inclusion in this committee's record but will make it available to requesting offices.

2. **What is the future of ONAP at the FCC? What are you doing to ensure that it has the resources it needs to succeed in its mission?**

Response: The Commission created ONAP in 2010 to function as an office within the Consumer and Governmental Affairs Bureau (CGB). Under the Commission's rules, the Consumer and Governmental Affairs Bureau "develops and administers the Commission's consumer and governmental affairs policies and initiatives to enhance the public's understanding of the Commission's work and to facilitate the Agency's relations with other governmental agencies and organizations."

As part of the general internal budget process, ONAP resources are "shared resources" within CGB to maximize administrative efficiencies. CGB also provides essential leadership and oversight to ensure that ONAP activities are prioritized and properly funded. Importantly, many ONAP activities benefit from intra-agency support in other bureaus such as the Wireline Competition Bureau, the Wireless Telecommunications Bureau, the Office of General Counsel, and the Office of Managing Director. All of these offices and bureaus play a key role in ensuring that ONAP's work is supported. Although the Commission has experienced significant funding limitations related to flat-funding, we will continue to provide ONAP with the resources necessary for completing its mission and goals.



**Chairman Wheeler, earlier this year, I and several of my colleagues wrote to the FCC to express our concern about how and when the FCC engages with tribal stakeholders. This was motivated by the FCC's failure to initially consult on its efforts to reform the universal service mechanism that supports rate-of-return carriers.**

**As you noted in your recent response, the National Tribal Telecommunications Association has submitted a proposal to the FCC to create a Tribal Broadband Factor. This proposal has been endorsed by the National Congress of American Indians.**

- 3. I expect that the FCC will carefully review this proposal but can you discuss what steps the FCC is taking to drive investment into Indian Country?**

Response: Broadband technology is critical for Tribal communities to participate fully in today's economy. I have personally seen the lack of communications services and infrastructure across Indian Country, which further generates a history of isolation that has limited economic and educational opportunities. That is why expanding high-speed broadband connections to all corners of the country is a top priority for the Commission.

At the National Congress of American Indians 2014 Executive Council Winter conference, I emphasized the importance of establishing a reinvigorated Tribal consultation process that addresses many goals, including: (1) improving access to world class broadband infrastructure; (2) access to spectrum and wireless infrastructure; and (3) ensuring a diversity of media ownership voices in Indian Country. The Commission's Office of Native Affairs and Policy (ONAP) has developed and manages a comprehensive plan to strengthen the Commission's consultation and training efforts in all regions of the country. This includes Commission-hosted regional Tribal training and consultation workshops and participation in many Indian Country outreach events. In 2015, for example, the Commission has hosted three regional training and consultation workshops (in Arizona, Oregon, and South Dakota), and has participated in numerous Tribal outreach events, including meetings of the National Congress of American Indians, the United South and Eastern Tribes, and the Affiliated Tribes of Northwest Indians

The Commission, with ONAP's leadership, plans to build upon its ongoing consultative relationship with the Tribal Nations who own and operate rate-of-return carriers. In each year since 2010, ONAP has actively engaged with NTTA both in Indian Country and at the Commission. In 2015, the Commission has engaged and consulted with Tribal Nations, NTTA, and others in Indian Country on long-term reform of rate-of-return support and plans to continue to do so.

**Attachment 2-Member Requests for the Record**

*During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.*

**The Honorable Gus Bilirakis**

- 1. Chairman Wheeler, in March we discussed public safety interference complaint responses, and a resulting quarterly report, which you thought was a good idea. I know you have provided some information. Have you posted what you provided the Committee on the website so the public can see what is going on, and what you are doing?**

Response: Yes, the report is posted at the following links:

<http://transition.fcc.gov/eb/reports/>

<https://www.fcc.gov/encyclopedia/eb-documents>

**The Honorable Bill Johnson**

- 1. Please submit how much the FCC has spent on travel in fiscal year 2013, 2014, and 2015 by Commissioner.**

Response:

Federal Communications Commission

Chairman and Commissioners Travel Amounts for Fiscal Years 2013 - 2015

<b>Office</b>	<b>Term</b>	<b>Fiscal Year 2013</b>	<b>Fiscal Year 2014</b>	<b>Fiscal Year 2015*</b>
Chairman Wheeler	November 2013 -Present	\$0	\$57,641	\$38,459
Commissioner Clyburn	August 2009 - Present	\$40,762	\$59,294	\$45,733
Commissioner Rosenworcel	May 2012 - Present	\$34,826	\$58,526	\$32,264
Commissioner Pai	May 2012 - Present	\$36,737	\$32,558	\$31,583
Commissioner O'Rielly	November 2013 - Present	\$0	\$32,518	\$23,891
Chairman Genachowski	June 2009 - May 2013	\$44,176	NA	NA
Commissioner McDowell	June 2006 - May 2013	\$26,079	NA	NA
<b>Total</b>		<b>\$182,580</b>	<b>\$240,538</b>	<b>\$171,930</b>

### **The Honorable Billy Long**

- 1. Chairman Wheeler, I am curious about the Broadcasters Relocation Fund, and how those monies are going to be spent. The fund is currently at \$1.75 billion, as you know, and obviously that fund was set up to pay for all of the relocation costs to the broadcasters you are required by the FCC to move to a new channel as part of the auction. After examining these issues for the last few years, has the FCC determined how many stations it is able to re-pack with that \$1.75 billion fund?**

Response: Because of the voluntary nature of the Incentive Auction, we do not know in advance how many broadcasters in each market will elect to participate in the auction. At this point, however, we have no reason to believe that the \$1.75 billion Broadcaster Relocation fund will be insufficient to cover the relocation costs of broadcasters that remain on the air and must move to a new channel after the Incentive Auction. We are taking appropriate measures to disburse funds as fairly and efficiently as possible to ensure the sufficiency of the fund. We have proposed to optimize the final broadcaster channel assignments to minimize relocation costs by (1) maximizing the number of stations assigned to their pre-auction channels; and (2) avoiding reassignments of stations with high anticipated relocation costs, based on the most accurate information available. We are also encouraging broadcasters to consider ways in which they can save on expenses, including repurposing existing equipment, swapping equipment with other broadcasters, and considering ways to share equipment.

### **The Honorable Chris Collins**

- 1. Please provide the legislative language you might suggest that would assist you on pirate radios.**

Response: Staff from the Office of Legislative Affairs and the Enforcement Bureau spoke to Congressman Collins's staff on August, 11, 2015, regarding language that would assist the Commission on pirate radio enforcement. Commission staff did not provide any specific language; however, staff explained how language authorizing the agency to take enforcement action against "aiders and abettors" to pirate radio operations would help the Enforcement Bureau shut down pirate radio operators. Pirate radio operators often are very difficult to track down, but it is much easier to identify the landlords of these premises or the entities that support the pirate operations. Providing the Commission with authority to take action against aiders and abettors will help shut down illegal operations and deter future aiding and abetting efforts. Commission staff told Congressman Collins's staff that if they were to draft legislative language, Commission staff would be happy to provide any technical assistance requested, which is the agency's standard process regarding technical assistance with potential legislative language.