



MEMORANDUM

May 13, 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 Wednesday, May 15, 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) has taken a series of actions related to the availability of mid- and high-band spectrum for 5G wireless broadband services. High-band spectrum fades over shorter distances and is less able to penetrate buildings and trees than mid- or low-band spectrum. Large wireless companies are seeking a range of spectrum bands (high, mid and low) to deploy 5G services.

In the mid-band, the FCC is focused on three bands: The Educational Broadband Service (EBS) 2.5 GHz; the Citizens Broadband Radio Service (CBRS) 3.5 GHz; and the C Band 3.7 - 4.2 GHz bands. Regarding the EBS band, the FCC last year released a Notice of Proposed Rule Making (NPRM) to propose new opportunities for entities to obtain unused spectrum for next generation wireless broadband, including 5G.¹ The Commission also sought comment on additional approaches for transforming the 2.5 GHz band, including by moving directly to an auction for some or all of the spectrum.

Regarding the CBRS band, the FCC last year released an order adopting certain limited changes to the rules governing Priority Access Licenses (PALs) to be issued in the band: larger license areas, longer license terms, renewability and performance requirements, and changes to

¹ Federal Communications Commission, *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, WT Docket No. 18-120, FCC 18-59 (May 10, 2018).

the competitive bidding rules for the issuance of PALs and to the ability to partition and disaggregate areas within PALs.²

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.³ Recently, 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.⁴

With regard to high-band spectrum, the FCC held an auction for the 24 GHz band in March, and assignment phase bidding began on May 3, 2019.

The FCC also sought comment on expanding unlicensed use in the 6 GHz band in an October 2018 NPRM.⁵ The 5G Automotive Association (5GAA) filed a petition in November 2018 asking the FCC for a waiver to allow deployment of Cellular Vehicle-to-Everything (C-V2X) technology in the upper 20 megahertz of the 5.9 GHz band. On December 6, 2018, the FCC released a public notice requesting comment on 5GAA's petition.⁶ Both proceedings are still pending.

B. Media Ownership

Since 2017, the FCC has completed several rulemakings rolling back media-related protections for consumers and local communities. In 2017, the FCC reinstated a previously-repealed ownership cap discount, thereby allowing some media companies to undercount the audience reached metric in calculating whether the applicable statutory media ownership cap has

² Federal Communications Commission, *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, GN Docket No. 17-258, FCC 18-149 (Oct. 24, 2018).

³ Federal Communications Commission, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, GN Docket No. 18-122, FCC 18-91 (July 13, 2018).

⁴ Federal Communications Commission, *International Bureau and Wireless Telecommunications Bureau Seek Focused Additional Comment in 3.7 – 4.2 GHz Band Proceeding*, Public Notice, DA 19-385 (May 3, 2019).

⁵ Federal Communications Commission, *Unlicensed Use of the 6GHz Band*, Notice of Proposed Rulemaking, ET Docket No. 18-295, FCC 18-147 (Oct. 24, 2018).

⁶ Federal Communications Commission, *Office of Engineering and Technology and Wireless Telecommunications Bureau Seek Comment on 5GAA Petition for Waiver to Allow Deployment of Cellular Vehicle-to-Everything (C-V2X) Technology in the 5.9 GHz Band*, Public Notice, DA 18-1231 (Dec. 6, 2018).

been exceeded. The FCC also modified the Local Television Ownership Rule to allow a single entity to own two of the top four stations in a given market, subject to a case-by-case review. In November of 2017, the FCC eliminated its “eight voices” test and its newspaper/broadcast and radio/television cross-ownership rules. The agency also reversed its earlier decision to treat joint sales agreements as conferring attributable ownership interests.

Two notable media proceedings are currently pending before the Commission. The first is the FCC’s proposal last year to change or eliminate some of the rules regulating children’s educational television.⁷ Among other things, the proposal includes shortening the required minimum length of such programs, eliminating the requirement that educational programming air on a regular schedule, and allowing stations to broadcast educational programs on secondary, rather than primary, channels. The second is the FCC’s 2018 Quadrennial Regulatory Review, which tees up changes to three significant media ownership rules: the rule limiting the number of radio stations one person can own in a market; the rule limiting the number of full-power televisions an entity can own in a market; and the dual market rule, which prevents mergers between television stations affiliated with the Big Four networks (ABC, NBC, CBS, and Fox).⁸

C. Elimination of Environmental and Historic Reviews and Limiting Municipal Authority

The FCC issued two orders in 2018 related to the deployment of wireless infrastructure. The first, issued in May 2018, eliminated some environmental and historic preservation reviews for wireless infrastructure siting. The second, issued in September 2018, addressed municipalities’ permitting review and approval processes for wireless infrastructure facilities situated in public rights-of-way. Both orders have been appealed and those appeals are pending and awaiting judicial review.

D. Network Resiliency

Following two major U.S. hurricanes, the FCC launched a reexamination last fall of the Wireless Resiliency Cooperative Framework, which is a voluntary set of best practices intended to ensure the reliability of wireless communications during disasters and other emergencies. In November 2018, the Public Safety and Homeland Security Bureau (PSHSB) sent letters to carriers requesting information about their use of the framework during the disasters. In April

⁷ Federal Communications Commission, *Children’s Television Programming Rules*, Notice of Proposed Rulemaking, MB Docket No. 18-202, FCC 18-93 (July 13, 2018).

⁸ Federal Communications Commission, *2018 Quadrennial Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, MB Docket No. 18-349, FCC 18-179 (Dec. 13, 2018).

2019, PSHSB released a notice seeking comments from the public regarding the implementation and effectiveness of the framework.⁹

E. Mapping

The lack of accurate, granular, dependable maps showing geographic areas where consumers have broadband internet access service continues to be a challenging FCC issue, particularly for funding models that rely on such maps. The FCC announced in December 2018 an investigation into the accuracy of maps produced in the Mobility Fund Phase II auction reflecting the availability of wireless LTE service in rural areas. The FCC has an open proceeding to consider proposals for more accurate maps.¹⁰

F. Universal Service Fund

The current Commission has 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. 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. The Lifeline National Eligibility Verifier, which is a database to help carriers determine whether consumers are eligible for the Lifeline program, has been launched in twenty-two states and three territories.

Last month, the FCC announced its intention to create the “Rural Digital Opportunity Fund” which will provide \$20.4 billion over 10 years for rural broadband. According to Chairman Pai, the funds would be “repurposed” money from the Universal Service Fund.¹¹ The FCC has opened a docket but provided few details about the program.

Separately, the Commission is currently considering a proposal that would place an overall budgetary cap on the four Universal Service Fund programs.

G. Security

Historically, the FCC has worked with other government agencies to protect our nation’s networks from malicious cyber-attacks. The mission of the FCC’s Communications Security,

⁹ Federal Communications Commission, *Public Safety and Homeland Security Bureau Seeks Comment on Improving the Wireless Resiliency Cooperative Framework*, PS Docket No. 11-60, DA 19-242 (Apr. 1, 2019).

¹⁰ See Federal Communications Commission, *Reform of the FCC Form 477 Data Program*, WC Docket 11-10.

¹¹ *5G is About to Get a Big Boost from Trump and the FCC*, Washington Post (Apr. 12, 2019).

Reliability and Interoperability Council (CSRIC), which recently rechartered for a new two-year term, is to provide recommendations to the Commission to ensure, among other things, optimal security and reliability of communications systems. The current Commission initially took steps to limit the agency's role in cybersecurity matters. The Chairman ordered the revocation of several cybersecurity-related reports and investigations, including an FCC White Paper on cybersecurity risk reduction and a Notice of Inquiry regarding 5G network security.

In April 2018, the FCC adopted a NPRM to consider how to address potentially insecure network components used in the networks of carriers receiving universal service funds.¹² The FCC issued a Public Notice in October 2018 to seek further information on whether and how provisions of the 2019 National Defense Authorization Act affected the proceeding.¹³

At the FCC's May 2019 Open Meeting, the Commission rejected an application submitted in 2007 by China Mobile to connect calls from U.S. consumers to callers around the world. In justifying its denial, Chairman Pai said the application "raises substantial and serious national security and law enforcement risks."

H. Robocalls

Consumers continue to log complaints with the FCC about robocalls and spoofing more often than any other issue. The FCC has taken both regulatory and enforcement actions to address these issues. A Notice of Inquiry was initiated seeking comment on methods to authenticate calls to reduce caller ID spoofing in July 2017.¹⁴ In December 2018, it issued an order creating a reassigned number database to minimize robocalls to consumers who have not given consent to receive such calls.¹⁵ In February 2019, the FCC released an NPRM to implement the anti-spoofing provisions in the RAY BAUM'S Act.¹⁶ Beyond these regulatory

¹² Federal Communications Commission, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, WC Docket No. 18-89, FCC 18-42 (Apr. 18, 2018).

¹³ Federal Communications Commission, *Wireline Competition Bureau Seeks Comment on Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019*, Public Notice, WC Docket No. 18-89, DA 18-1099 (Oct. 26, 2018).

¹⁴ Federal Communications Commission, *Call Authentication Trust Anchor*, Notice of Inquiry, WC Docket No. 17-197, FCC 17-89 (July 14, 2017).

¹⁵ Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Report and Order, CG Docket No. 17-59, FCC 18-177 (Dec. 13, 2018).

¹⁶ Federal Communications Commission, *Implementing Section 503 of the RAY BAUM'S Act*, Notice of Proposed Rulemaking, WC Docket No. 18-335, FCC 19-12 (Feb. 15, 2019).

actions, the FCC has also taken enforcement actions against individuals who violate the robocall provisions. According to the Wall Street Journal, since 2015 the FCC has fined robocallers \$208 million, but has only collected \$6,790 to date. Finally, Chairman Pai and the Enforcement Bureau Chief have both independently written letters to the carriers urging them to take part in voluntary industry efforts to stop illegal robocalls.

I. 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. A series of subsequent reports detailed how widely this location data was shared and the ease with which the information could be obtained from private companies. Chairman Pai has indicated publicly that the Enforcement Bureau is investigating the issue.

J. Pending Major Transactions

T-Mobile US, Inc. filed an application with the FCC in June 2018, seeking approval of the company's proposed acquisition of Sprint Corporation. The merger, if approved, would reduce the number of national wireless carriers from four to three. The FCC's six-month informal "shot clock" for reviewing the transaction started on July 18, 2018. The FCC has stopped and started this shot clock a number of times, but the 180-day period is coming to a close.

Nexstar Media Group, a television broadcaster that owns or operates 174 stations in 100 markets across the United States, has applied to the FCC for approval to acquire the licenses currently held by Tribune Media. Tribune owns or operates 44 stations in 19 markets. Nexstar has committed to divest certain stations such that the combined company would reach less than the statutory maximum, which is 39 percent of American households. The merger would result in the largest local broadcast company in the United States.

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