

DAVID N. CICILLINE
1ST DISTRICT, RHODE ISLAND

2233 RAYBURN BUILDING
WASHINGTON, D.C. 20515
(202) 225-4911
(202) 225-3290 (FAX)

1070 MAIN STREET, SUITE 300
PAWTUCKET, RI 02860
(401) 729-5600
(401) 729-5608 (FAX)



Congress of the United States
House of Representatives
Washington, DC 20515

October 23, 2019

CHAIR, DEMOCRATIC POLICY AND
COMMUNICATIONS COMMITTEE

COMMITTEE ON THE JUDICIARY

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ANTITRUST, COMMERCIAL
AND ADMINISTRATIVE LAW

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SUBCOMMITTEE ON MIDDLE EAST,
NORTH AFRICA, AND INTERNATIONAL
TERRORISM

SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

Chairman Ajit Pai
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Re: GN Docket No. 18-122, Expanding Flexible Use of the 3.7 GHz to 4.2 GHz Band

Dear Chairman Pai:

I write in regard to key policy decisions that the Federal Communications Commission (FCC) must make ahead of its C-Band spectrum sale.

There is bipartisan consensus that America must lead in the development of fifth-generation (5G) wireless networks and that doing so requires access to more low-, mid- and high-band spectrum.¹ As you have noted, mid-band spectrum is particularly critical to the deployment of 5G networks,² and there is general agreement that the most promising mid-band spectrum is in the C-Band (3.7-4.2 GHz).³ I understand that the FCC is currently developing a policy to enable the reallocation and exclusive licensing of portions of the C-Band spectrum, and that the Commission is considering several alternative frameworks for the auction of these new flexible-use licenses.⁴

¹ See e.g., Letter from Sen. Roger F. Wicker, Chairman, S. Comm. on Com., Sci., and Transp. & Sen. John Thune, Chairman, S. Subcomm. on Com., Tech., Innovation, and the Internet, to Ajit V. Pai, Chairman, Fed. Commc'n Comm'n (May 10, 2019), https://www.commerce.senate.gov/public/_cache/files/9cd099f8-a937-4581-a2b8-31d675e56afa/E2107BB7BF64E9391590690AC1583B39.10may19-rfw-and-jrt-letter-to-fcc-chairman-re-mid-band-spectrum.pdf.

² Letter from Ajit V. Pai, Chairman, Fed. Commc'n Comm'n, to Sen. Roger F. Wicker, Chairman, S. Comm. on Com., Sci., and Transp. (May 30, 2019), <https://docs.fcc.gov/public/attachments/DOC-357896A1.pdf>.

³ See, e.g., Brendan Carr, Commissioner, Fed. Commc'n Comm'n, Remarks at the WISPAmerica Convention (Mar. 20, 2019), <https://docs.fcc.gov/public/attachments/DOC-356655A1.pdf> ("One spectrum band that I have been focused on this year is the C-Band. It is prime, mid-band spectrum that can help fuel next-gen wireless services."); Michael O'Rielly, *A Mid-Band Spectrum Win in the Making*, FCC BLOG (Jul. 10, 2017), <https://www.fcc.gov/news-events/blog/2017/07/10/mid-band-spectrum-win-making>; Letter from Sen. Roger F. Wicker, Chairman, S. Comm. on Com., Sci., and Transp. & Sen. John Thune, Chairman, S. Subcomm. on Com., Tech., Innovation, and the Internet, to Ajit V. Pai, Chairman, Fed. Commc'n Comm'n (May 10, 2019).

⁴ Letter from Ajit V. Pai, Chairman, Fed. Commc'n Comm'n, to Sen. Roger F. Wicker, Chairman, S. Comm. on Com., Sci., and Transp. (May 30, 2019), <https://docs.fcc.gov/public/attachments/DOC-357896A1.pdf>.

As Congress has long recognized, the way that spectrum is sold can dramatically affect the long-term competitiveness of the post-sale market.⁵ In recognition of this concern,⁶ Congress expressly prohibited the FCC from structuring auctions to prioritize revenue.⁷ Congress also required that when there are multiple applications for a spectrum license, the Commission is required to allocate such licenses through a system of competitive bidding.⁸ Additionally, Congress instructed the Commission to design auctions with several distinct factors in mind. These include “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.”⁹

To ensure that the Commission’s plans support these statutory requirements and thereby prioritize competition, economic opportunity, and innovation, I request that you provide responses to the following questions by November 25, 2019.

1. I understand that 5G will require a mix of low-band, mid-band, and high-band spectrum. 5G services will require larger contiguous blocks of mid-band and high-band spectrum than previous generations of wireless services that primarily relied on low-band spectrum. What is the minimum amount of C-Band spectrum that the FCC believes is necessary to assure a competitive 5G marketplace that supports at least four facilities-based wireless providers?
2. Various parties have proposed that either the C-Band Alliance (CBA) or the FCC should run the auction. Whichever entity is chosen will have significant power over how the auction is ultimately run. How will granting this power to a private stakeholder such as the CBA affect competition in the C-Band market? Is there a reason the FCC would not appoint an *independent* transition facilitator?
3. If the FCC does delegate the auction process to the CBA, what is the relevant legal authority that would permit this delegation?

⁵47 U.S.C. § 309 (j)(3).

⁶See, e.g., Thomas W. Hazlett et al., *What Really Matters in Spectrum Allocation Design*, 10 NW. J. TECH. & INTELL. PROP. 95, 102-03 (2012) (finding that wireless services produce consumer gains “of at least \$2.90 or \$3.50 per MHz per person *per year*” while license revenues produce gains of only about “\$0.63 per MHz per person as a *one-time* payment to the government.” The author further notes that “a new auction design that (heroically) doubled auction revenues would, if it reduced consumer surplus by just one-half of one percent, produce costs in excess of benefits.” The author concludes that spectrum auctions should be structured to maximize consumer welfare through a focus on market efficiency rather than short term auction revenues.)

⁷ 47 U.S.C. § 309 (j)(7) (“the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding.”).

⁸ *Id.*

⁹ *Id.* § 309 (j)(3); This policy goal is also supported by robust economic evidence. See, e.g., Thomas W. Hazlett et al., *What Really Matters in Spectrum Allocation Design*, 10 NW. J. TECH. & INTELL. PROP. 93, 102-03 (2012).

4. If the FCC does delegate the auction process to the CBA, what—if anything—would guarantee that the private process will promote competition rather than the maximization of revenues to satellite providers?
5. AT&T has raised concerns with the CBA proposal, stating that it “would create enormous uncertainty, provide no price discovery, result in enormous burdens and complexity for bidders, invite strategic bidding, and lead to unpredictable and potentially unfair outcomes for bidders, as well as possibly resulting in a failed auction or unsold licenses.”¹⁰ What is your response to these concerns?
6. What impact does the FCC expect the number of licenses to have on competition?
7. License structure will have implications for the post-auction structure of the market. How will the licenses be structured by the FCC? In particular, will the Commission require that at least a portion of the licenses be the size of counties, or smaller, to make them relevant and affordable to small and rural ISPs and other potential competitive entrants?
8. The CBA proposes that 180 MHz be divided into nine 20 MHz licenses across each partial economic area. Its proposal does not limit the number of licenses a bidder may acquire. What is the FCC’s analysis of how this proposed design will affect the post-auction market structure?
9. The CBA proposes a modified combinatorial auction bidding structure with an “early cleared tranche.” This proposal has been criticized by major stakeholders including T-Mobile and AT&T.¹¹ Some have raised concerns that the early tranche may give an unfair advantage to early winners. How does the FCC anticipate this arrangement will affect the ultimate structure of the post-auction market? If the agency does authorize an “early cleared tranche,” does the Commission anticipate an assignment round to determine which winning bidder(s) will obtain this advantage?
10. Prior auctions have put in place spectrum caps (i.e., limits on spectrum acquired in C-band and of mid-band spectrum overall) to prevent the largest and most well-financed wireless providers from foreclosing rivals through buying up more spectrum than they require. Is the FCC considering requiring spectrum caps as part of either the private or public auction process? What other protections is the FCC considering to prevent the largest and most well-financed wireless providers from using the spectrum auction process as an opportunity to foreclose rivals?
11. Does the FCC plan to limit the number of licenses or the amount of spectrum that any single enterprise may buy in any forthcoming auction?

¹⁰ Letter from Michael P. Goggin, General Attorney, AT&T, to Marlene H. Dortch, FCC Secretary, Fed. Comm’n Comm’n, GN Docket No. 18-122, 6 (July 16, 2019) <https://ecfsapi.fcc.gov/file/10716021911212/2019-07-16%20ATT%20Auction%20Ex%20Parte--Final.pdf>

¹¹ *Id.*; Monica Allevan, *T-Mobile, CBA exchange C-band arguments*, FIERCE WIRELESS, (June 6, 2019), <https://www.fiercewireless.com/wireless/t-mobile-cba-exchange-c-band-arguments>

12. What protections is the FCC considering to ensure that smaller providers would be able to successfully bid against their larger rivals in either a public or private auction? Will the Commission ensure that a substantial portion of the licenses are for counties, as in the neighboring CBRS band, or some other licensing area small enough to ensure smaller and rural ISPs can compete?
13. In your estimation, how much C-Band spectrum would each of the largest wireless carriers require in order to deploy 5G networks?
14. The Justice Department's proposed consent decree with Sprint and T-Mobile posits that, post-merger, Dish Network will eventually enter the wireless marketplace as a fourth nationwide facilities-based wireless carrier. Does the Justice Department's effort to create a fourth wireless competitor affect the timeline by which the FCC will initiate the auction process? What steps can the FCC take to ensure that the C-Band auction process does not disfavor or disadvantage the fourth competitor that the Justice Department hopes will emerge from the proposed merger of Sprint and T-Mobile (assuming that the transaction survives a pending legal challenge)?
15. Part of the economic rationale for the highly successful FCC auction methodology of using Simultaneous Multiple Round Auctions—in which groups of related licenses are auctioned simultaneously over many rounds of bidding—is that auctioning the licenses at the same time provide the bidders with the most efficient process for buying spectrum coverage that fits with their business plan. Would auctioning tranches of C-band at different times conflict with what the FCC has learned by making related licenses available at the same time?
16. There are a variety of different proposals for how to manage the process of reallocating the C-Band for 5G. Has the Commission conducted an analysis of how the proposals of CBA, T-Mobile, and ACA/Charter/CCA will affect competition, economic opportunity and innovation? Has the Commission conducted an analysis of how the proposal by the Public Interest Spectrum Coalition, Broadband Access Coalition, and others proposing to allow shared use of un-auctioned frequencies in the C-Band would affect competition and the availability of broadband to unserved and underserved areas?
17. There are also various proposals for handling the transition of the use of the C-Band. Does the FCC have a view on the differences between various proposals for handling the transition in terms of their impact on competitiveness in the market for 5G mobile services?
18. Does the FCC plan to reimburse or provide incentive payments for the transition of terrestrial satellite receivers of C-Band spectrum? How would the use of those funds affect competition in the markets in which those spectrum users operate?
19. What are the FCC's plans for C-Band spectrum that is not auctioned in any upcoming public or private auction? Specifically, what are the potential uses for that remaining

spectrum, and how would these potential uses affect competition in the following markets:

- a. Geosynchronous satellite services;
- b. 5G wireless services;
- c. Fixed wireless services;
- d. Rural broadband; and
- e. Terrestrial C-Band receivers.

I appreciate your prompt attention to this matter.

Sincerely,



David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives

cc: The Honorable Jerrold Nadler, Chairman, Committee on the Judiciary

The Honorable Doug Collins, Ranking Member, Committee on the Judiciary

The Honorable F. James Sensenbrenner, Ranking Member, Subcommittee on Antitrust, Commercial, and Administrative Law of the House Committee on the Judiciary