Answers to Additional Questions for the Record by Michael O'Rielly, FCC Commissioner

The Honorable Gus M. Bilirakis

1. **During my in-person questioning, I asked Chairman Pai about the FCC field office closures that took place in early January. Due to your longstanding interest in combatting pirate radio in a timely and effective manner, do you believe that these closures have resulted in (or will result in) increased actions against pirate radio operators?**

   While I expressed serious reservations regarding the closure of FCC field offices when enacted by the previous Commission, it is unlikely that this action will have a negative effect on the Commission's ability to combat pirate radio stations. The problem with the previous Commission's approach to pirate radio was a lack of commitment to enforcing the law and eliminating these illegal operations, not the lack of equipment, personnel, or offices. In particular, I was told by numerous individuals involved in the broadcasting industry that the previous Chairman's leadership team had set pirate radio enforcement as a low priority. No amount of resources could overcome that misguided approach.

   Thankfully, Chairman Pai has a much different view and enforcement of the law against those involved in pirate radio has increased substantially. The new Commission is committed to eliminating pirate radio "stations" and preventing such stations from developing in the future. Accordingly, I believe the FCC personnel, including in our Miami field office who I recently visited, are capable and committed to preventing pirate radio broadcasting from occurring anywhere within their oversight area.

   a. **Additionally, can you expand upon your written testimony regarding the repetitive warning process in place for pirate radio operators and the penalty restrictions the FCC faces in this area?**

      Under longstanding Commission practices implementing current law, the Commission gives notice to those individuals who are not Commission station licensees and who may be in violation of Commission rules (e.g., pirate radio broadcasters) prior to actually issuing a Notice of Apparent Liability for such violations. Equally problematic, the statute limits the amount the Commission can fine those participating in pirate radio broadcasting to rather trivial amounts compared to other violations. For instance, individuals recently found guilty of pirate broadcasting within the AM, FM or TV bands have faced fines in the *thousands* of dollars. However, those recently found in violation of the law or Commission rules for slamming or illegal robocalling have faced fines in the hundreds of *millions.* Together, these limitations have emboldened pirate broadcasters, who know the Commission, no matter how committed, can only do so much to aggressively fight pirate broadcasting. Respectfully, I recommend that Congress review and amend the law to modify these specific provisions in the narrow case of pirate broadcasting. I would be more than pleased to provide any assistance, if needed, to you or other Committee Members for this purpose.

Subcommittee Ranking Member Michael F. Doyle

1. **Do you believe that the Commission can unilaterally raise National Television Ownership cap?**

   No, based on my personal experience when the national cap was last altered, I believe only Congress can change the cap via passage of legislation. My views are similar with regards to the UHF discount. My recollection is that it was the expressed wishes of Congress that the UHF discount could not be altered without a change in the national ownership cap, thus also requiring a change in law. Hopefully, this helps explain my vote earlier this year to reverse the last Commission's effort to eliminate the UHF discount, thereby undoing a change not permitted by the statute. Substantively, I do not agree with maintaining either the UHF discount or such a low national ownership cap, if one is to exist at all, but that is a matter for Congress to decide or affirmatively delegate to the Commission.

   Others who were integrally involved with the last Congressional process argue that the statute only prohibits the Commission from modifying the national cap as part of a quadrennial review, pursuant to section 202(h) of the Telecommunications Act of 1996. While I don't agree with this reading of the law or how counterintuitive it would be in practice, such a view is not specifically prohibited and, with respect, the law could have been more clearly crafted. Accordingly, I have taken the position that this entire issue may need to be litigated out through the judicial process to determine which position is accurate, and I will support whatever action is necessary to see that the issue gets its day in court. I suspect my position will ultimately prevail at the end of the day, but I have been wrong before prognosticating court outcomes.

The Honorable Yvette Clarke

1. **Unlicensed spectrum – for uses like Wi-Fi – provides incredible value to the economy. By one estimate, that value will reach $547 billion this year, provided that sufficient unlicensed spectrum is made available. But a February 2017 study by Quotient Associates forecasts a Wi-Fi spectrum shortfall in the United States of between 788 MHz and 1.6 GHz by 2025, and predicts a particular need for more contiguous Wi-Fi spectrum to support 160 MHz "Gigabit Wi-Fi" channels.**

   a. **What can the FCC do to maintain U.S. leadership in Wi-Fi technology and ensure that sufficient unlicensed spectrum is made available to support ubiquitous access to Gigabit Wi-Fi among American consumers?**

      As other people have stated more eloquently, the beauty of unlicensed spectrum is we have no idea what it will be used for in the future but we are likely to be surprised at the innovation and ingenuity when it occurs. I agree that it is paramount to have sufficient spectrum available for unlicensed purposes, such as Wi-Fi, especially given the numerous studies indicating a potential shortfall in the coming years and the already congested state of existing bands today.

      To address the expected spectrum need and importance of unlicensed, I believe that the Commission should take a two-fold approach. Primarily, the Commission should examine and authorize unlicensed operations in bands where sufficient spectrum is not available through clearing or other mechanisms to make auctioned licenses

attractive and where harmful interference will not be caused to the primary licensees. High on this priority list must be 5.9 GHz. The Commission is currently conducting lab tests to determine whether, and if so how, unlicensed operations can occur in this band previously allocated for automobile safety services. Given its proximity to other unlicensed bands, this particular band would provide vast opportunities to offer wide channels, thus faster speeds and greater capacity than exists today.

At the same time, the Commission must reallocate additional bands for unlicensed operations. I appreciate that the Commission is actively exploring the best methods and bands to do so. For instance, the Commission's Spectrum Frontiers proceeding from last year allocated spectrum between 64 and 71 GHz for unlicensed services. The item also included a Notice of Proposed Rulemaking to consider whether to allocate additional spectrum in the 70 and 80 GHz bands for additional unlicensed use. Chairman Pai, with my wholehearted support, has indicated that the Commission will take action on that NPRM later this year.

Additionally, the Commission needs to free mid-band spectrum for unlicensed operations. It's one of the reasons I have advocated that the Commission seize upon an ad hoc industry proposal to reallocate the 3.7 to 4.2 GHz for licensed services and the 6 GHz band for unlicensed services. For the licensed portion, this action is necessary as US wireless carriers need mid-band spectrum to compete internationally in the global race to offer "5G" services. Similarly, reallocating 6 GHz for unlicensed purposes, while protecting incumbents or using market mechanisms to facilitate their exit, would complement the already existing unlicensed operations in the 5 GHz band.