

What's New in 5G - August 2020

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The next-generation of wireless technologies – known as 5G – is here. Not only is it expected to offer network speeds that are up to 100 times faster than 4G LTE and reduce latency to nearly zero, it will allow networks to handle 100 times the number of connected devices, revolutionizing business and consumer connectivity and enabling the “Internet of Things.” Leading policymakers – federal regulators and legislators – are making it a top priority to ensure that the wireless industry has the tools it needs to maintain U.S. leadership in commercial 5G deployments. This blog provides monthly updates on FCC actions and Congressional efforts to win the race to 5G.

Regulatory Actions and Initiatives

COVID-19 Relief

- The FCC continues to assist providers during the COVID-19 pandemic.
 - On July 16, 2020, the FCC released an [Order](#) granting RADWIN, Ltd. a temporary waiver for 60 days so that it may operate its broadband network at a higher power than the rules allow in the 5.15-5.25 GHz and 5.725-5.850 GHz bands and help consumers stay connected and access essential services during the COVID-19 pandemic.
 - Additionally, on July 17, 2020, the FCC granted [special temporary authority](#) to the Lower Brule Sioux Tribe to operate on unassigned 2.5 GHz spectrum, formerly Educational Broadband Service (“EBS”) spectrum, for a period of 60 days to provide network relief to residents of the Lower Brule Reservation during the pandemic.
- The FCC grants emergency authorizations so that providers and others can continue wireless infrastructure projects during the pandemic.
 - In addition to continuing to assist providers during the pandemic by granting special

temporary authority to operate on additional spectrum, the FCC granted emergency authorizations to [AT&T](#), [Verizon Wireless](#), [Windstream Services, LLC](#), [FirstNet](#), [Ector County, TX](#), [Leon County, TX](#), [University Park, TX](#), [Warren County, IA](#), [Charlevoix County, MI](#), and [Washtenaw County, MI](#) to resume standard historic preservation review under Section 106 of the National Historic Preservation Act for qualifying critical infrastructure (e.g., public safety and transportation) projects during COVID-19.

Low-Band Spectrum

- Clearing of the 600 MHz band for 5G wireless services concludes.
 - On July 13, 2020, the FCC [announced](#) the completion of the repacking process for television stations operating in the 600 MHz band. Since the auction of the spectrum concluded in 2017, the FCC has been clearing the band of television stations and stated that “with the end of the transition, the broader deployment of this spectrum will further help close the digital divide in rural America, ease congestion on wireless networks, promote the widespread availability of 5G, and spur job creation and economic growth.”

Mid-Band Spectrum

- The FCC extends the window for Tribes seeking access to 2.5 GHz spectrum and suggests a commercial auction will commence in mid- to late-2021.
 - On July 31, 2020, the FCC’s Wireless Telecommunications Bureau (“Wireless Bureau”), in response to requests from various parties, released a [Memorandum Opinion and Order](#) extending the Tribal priority filing window, which provides Tribal entities the opportunity to obtain unassigned EBS spectrum in the [2.5 GHz band](#) before it is made available for commercial services, by 30 days – *i.e.*, until September 2, 2020. In doing so, the Wireless Bureau noted that “the commercial auction is unlikely to begin until a few months after February 3 – and an extension of the filing window is likely to push out the commercial auction (and hence the commercial deployment of critical mid-band spectrum) even further.”
- The FCC’s next auction of mid-band spectrum for 5G services began.
 - The FCC announced that bidding for spectrum in the 3.5 GHz band [commenced](#) on July 23, 2020 – “offering the largest number of flexible-use spectrum licenses ever made available for bidding in a single auction.” As of round 19, the auction has raised over \$1.2 billion in gross bids.
 - Relatedly, on July 23, 2020, the FCC’s Office of Economics and Analytics (“OEA”) denied separate requests from [MEI Telecom, Inc.](#) and [Avangrid Networks, Inc.](#) to allow them to participate in the auction even though they submitted their upfront payments after the upfront payment deadline.
 - On July 14, 2020, the Wireless Bureau and the Office of Engineering and Technology released a [Public Notice](#) approving Key Bridge Wireless LLC’s (“Key Bridge”) Environmental Sensing Capability for use in the 3550-3650 MHz portion of the 3.5 GHz band. They subsequently released a [Public Notice](#) on July 31, 2020, announcing that the Spectrum Access System (“SAS”) operated by Key Bridge has satisfied the FCC’s SAS laboratory testing requirements and Key Bridge is approved to begin its initial commercial deployment.
- The FCC releases draft procedures for its next auction of mid-band spectrum for 5G services.

- On July 16, 2020, the FCC released a draft [Public Notice](#) that would, if adopted at its meeting on August 6, 2020, establish procedures for participating in the upcoming auction of licenses in the 3.7-3.98 GHz portion of the 3.7-4.2 GHz band (“C-band”). Although the draft procedures are generally aligned with the FCC’s procedures for standard spectrum auctions, the FCC would adopt procedures specific to the C-band by: (i) adopting separate categories of blocks (*i.e.*, Categories A, BC, and ABC) for each Partial Economic Area (“PEA”) based on the clearing deadline for that PEA; (ii) tiering minimum opening bids based on market population; and (iii) establishing assignment phase bidding procedures that would allow interim and permanent frequency selections in the top 46 PEAs that are subject to the early Phase I clearing deadline.
- On July 30, 2020, the Wireless Bureau released a [Public Notice](#) with the [Final Cost Category Schedule of Potential Expenses and Estimated Costs](#), which includes the categories and estimates of expenses that incumbents may incur as they clear the C-band. They also include the optional lump sum payment amounts for which incumbent earth station operators are eligible to receive and describe the process for electing (by August 31, 2020) to receive lump sum payments.
- On August 3, 2020, the Wireless Bureau released a [Public Notice](#) announcing that CohnReznick, and subcontractors Squire Patton Boggs, and Intellicom Technologies, Inc. were selected by a stakeholder committee to serve as the C-band Relocation Payment Clearinghouse. The Wireless Bureau also released a [Public Notice](#) announcing that RSM US LLP was selected to serve as the C-band Relocation Coordinator by eligible space station operators. The Wireless Bureau invited the submission of comments and reply comments on the selections (*i.e.*, whether the selections meets the C-band Report and Order selection criteria) by August 18, 2020 and August 28, 2020, respectively.
- On August 3, 2020, the International Bureau released a [Public Notice](#) announcing that it has released a [list](#) of earth stations that will be considered “incumbent” as part of the C-band transition (and that are therefore subject to reimbursement of relocation costs).
- At the D.C. Circuit, ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satelites S.A., and Hispasat S.A. (together, the “Small Satellite Operators”) and PSSI Global Services, LLC filed their joint opening brief on July 21, 2020. In addition, on July 28, 2020, the Alliance for Automotive Innovation (“AAI”) filed an amicus brief. While AAI did not file its brief in support of any particular party, it noted its interest in how the court addresses the FCC’s authority under Section 316 of the Communications Act to modify licenses.

5G Equipment and Infrastructure

- The FCC reaches agreement with historic preservation offices to facilitate the construction of wireless equipment at existing tower sites.
 - On July 20, 2020, the FCC Commissioner Carr [announced](#) that the FCC reached an agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers to support wireless infrastructure builds while protecting historic properties. It released a [Public Notice](#) explaining that the parties amended the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, which governs the collocation of (or the adding of wireless equipment on) existing towers, so that it is consistent with the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation*

Act Review Process, which governs tower constructions and other undertakings, by excluding from Section 106 historic preservation review collocations that involve a limited expansion (*i.e.*, 30 feet) beyond the boundaries of a tower site.

- The FCC takes action to clarify pole attachment requirements and eliminate barriers to broadband deployment.
 - On July 29, 2020, the Wireline Competition Bureau released a [Declaratory Ruling](#) to clarify two aspects related to the process for attaching new communications facilities to utility poles. *First*, it clarifies that the imposition by a utility of a “blanket ban” on attachments to any portion of a utility pole is inconsistent with the FCC’s rules, which requires that a utility provide a written explanation when denying pole access that is *specific* to the particular attachment and pole at issue, and therefore is not permissible. Of particular note, the Declaratory Ruling also makes clear that utilities cannot rely on their internal construction standards as grounds to deny attachment to any particular pole. The Declaratory Ruling explains that “not every construction standard is necessary to ensure safety, reliability, capacity, or proper engineering, and we are troubled with evidence in the record suggesting that in some cases, utilities deny attachments simply by reference to a construction standard without providing a specific explanation as to why a proposed attachment’s alleged violation of a construction standard poses a safety, reliability, capacity, or engineering issue.” This is an important clarification for companies deploying new facilities. *Second*, it clarifies that utilities and attachers have the flexibility to negotiate terms in their pole attachment agreements that differ from the FCC’s rules, but a utility cannot use its ownership of a pole as leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit. The utility has the burden to show that the exchange accorded a “significant benefit” to the attacher where a utility claims that a deviation from the FCC’s rules that benefits the utility was part of a negotiated exchange.
- The FCC seeks public input on a request to clarify the obligations of pole owners in areas with limited access to broadband.
 - On July 20, 2020, the FCC’s Wireline Competition Bureau released a [Public Notice](#) seeking comment on a [Petition for Expedited Declaratory Ruling](#) filed by NCTA – The Internet & Television Association, which asks the FCC to declare that: (i) pole owners must share in the cost of pole replacements in unserved areas; (ii) pole attachment complaints arising in unserved areas should be prioritized; and (iii) the FCC’s rules allow the Commission to order any pole owner to complete a pole replacement within a specified period of time or designate an authorized contractor to do so. Comments and replies are due August 19, 2020, and September 3, 2020, respectively.

Legislative Efforts

- The Senate holds a hearing on the state of U.S. spectrum policy.
 - On July 23, 2020, the Senate Subcommittee on Communications, Technology, Innovation, and the Internet of the Commerce Committee held a [hearing](#) examining the FCC’s and NTIA’s role in spectrum management and policymaking. Witnesses at the hearing discussed various topics, including the current U.S. wireless landscape, the need for both licensed and unlicensed approaches in the country’s long-term spectrum policy, how to improve U.S. spectrum management policies, and affordable 5G services for all Americans.

- The House considers a bill repealing the requirement that the FCC reallocate certain public safety spectrum for commercial services.
 - On July 15, 2020, the House Committee on Energy and Commerce considered the [Don't Break Up the T-Band Act of 2019](#), as amended, and ordered that the bill be voted on, by voice, by the full House. If enacted, the bill would repeal the statutory requirement that the FCC reallocate and auction the 470-512 MHz band (known as the [T-Band](#)), currently used by public safety entities, for commercial services by 2021.
- The House advances a funding bill that would encourage the preservation of spectrum for scientific purposes.
 - On July 14, 2020, the House Appropriations Committee voted to advance the [Commerce, Justice, Science and Related Agencies 2021 funding bill](#) with [text from the committee report](#) that encourages NTIA, in coordination with the FCC, to preserve spectrum access for scientific purposes. The bill has been placed on the Union Calendar.

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