

What's New in 5G - August 2022

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The next-generation of wireless technologies – known as 5G – is expected to revolutionize business and consumer connectivity, offering network speeds that are up to 100 times faster than 4G LTE, reducing latency to nearly zero, and allowing networks to handle 100 times the number of connected devices, 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

Spectrum

- The next auction of mid-band spectrum for 5G services kicks off as the FCC provides Tribal entities additional time to buildout their spectrum.
 - The first round of bidding in the FCC’s next auction of mid-band spectrum in the 2496-2690 MHz (“2.5 GHz”) band for commercial wireless services officially commenced on July 29, 2022 at 10:00 am ET. In a [News Release](#) announcing the start of bidding, FCC Chairwoman Rosenworcel commented: “We all know there are gaps in 5G coverage, especially in rural America, and this auction is a unique opportunity to fill them in.” As of the [close of Round 6](#), approximately \$132 million in gross proceeds have been raised.
 - Leading up to the start of bidding, the FCC’s Wireless Telecommunications Bureau (“WTB”) and Office of Economics and Analytics (“OEA”) released a [Public Notice](#) on July 11, 2022 announcing those entities that were [qualified](#) and those that were [not qualified](#) to bid in the auction. Among the 93 parties that submitted applications to participate, 82 applicants – including AT&T, DISH, T-Mobile, and Verizon – qualified to bid, and 11 applicants did not.
 - In addition, on July 8, 2022, the WTB released a [Public Notice](#) waiving the Tribal-specific interim and final performance deadlines for all 2.5 GHz Rural Tribal Priority

Window (“Tribal Window”) licensees. Accordingly, instead of being required to make an interim and final performance showing within two and five years, respectively, of their initial license grant, all Tribal Window licensees will be required to make an interim and final showing within four and eight years, respectively, of initial license grant.

- The FCC grants additional licenses and takes several actions related to spectrum in the 3.5 GHz band, including reclaiming certain licenses and facilitating leasing arrangements.
 - On July 26, 2022, the WTB released a [Public Notice](#) announcing the grant of an additional six long-form applications for 2,431 Priority Access Licenses (“PALs”) in the 3.5 GHz band, the auction for which concluded on September 2, 2020. Grant of the applications was made possible through the adoption of the Consent Decrees discussed further below, which required the applicants to relinquish some of the licenses they won (but keep others) because licenses held by certain related entities caused them to exceed the FCC’s spectrum aggregation limits. A list of the applications granted, sorted by licensee, is available [here](#), and a list of the same applications, sorted by market, is available [here](#).
 - On July 18, 2022, the WTB and OEA released an [Order](#) denying a request from Hilliary Acquisition Corp 2016, LLC (“Hilliary”) for a waiver of the down payment deadline for the 42 PALs in Texas and Oklahoma that it won in the 3.5 GHz band auction. Hilliary asserted that it failed to submit its down payment until three weeks after the September 17, 2020, deadline because its corporate officers had to self-quarantine due to COVID-19, which led to a miscommunication between Hilliary’s CFO and its bank. In addition, Hilliary noted that when it finally did pay, it included the down payment, final payment, and an additional 5% “late fee,” demonstrating its ability to pay, which is the underlying purpose of the down payment requirement. OEA and WTB, however, determined that Hilliary did not demonstrate “good cause” to support its waiver request. Accordingly, Hilliary is required to pay an interim default payment in the amount of \$161,193.00.
 - On July 15, 2022, the WTB and OEA released several Orders and Consent Decrees related to its rule prohibiting licensees from holding more than four PALs – or 40 megahertz of spectrum – in the 3.5 GHz band and its rule requiring the attribution of certain ownership interests for purposes of determining whether that limit has been exceeded. Each of the Orders finds that the parties below would exceed the spectrum aggregation limit due to the attribution of PAL holdings from various controlling and non-controlling interests of 10% or more – all of which stem from private equity firm BlackRock. Accordingly, each of the parties has entered into a Consent Decree under which it agrees to, among other things, remove certain PALs in the relevant markets from its respective application. The frequencies associated with the PALs that are being removed (a total of 462 PALs in 80 license areas) will be made immediately available for General Authorized Access (i.e., unlicensed) use.
 - [SAL Spectrum Order and Consent Decree](#)
 - [Cable One Order and Consent Decree](#)
 - [NorthWestern Order and Consent Decree](#)

- [U.S. Cellular Order and Consent Decree](#)

- [Shenandoah Cable Television Order and Consent Decree](#)

- In addition, on July 12, 2022, the WTB and OEA released a [Public Notice](#) announcing that Amdocs, Federated Wireless, Google, Key Bridge, and Sony (collectively, the “SAS administrators”) have been approved to support spectrum manager leasing for PALs in the 3.5 GHz band, subject to certain conditions. The FCC previously implemented a “light-touch” leasing notification framework for the 3.5 GHz band to replace its immediate processing procedures so that PAL licensees and lessees may enter into a spectrum manager lease via the light-touch notification process or the general 21-day notification process. Due to technical limitations, the SAS administrators may only enter leasing information into the FCC’s system Monday through Friday between the hours of 9:00 am and 5:00 pm ET, but they may continue to accept leases outside of that window. And each SAS administrator is permitted to submit a maximum of five leases per minute during the window.

5G Networks and Equipment

- The FCC announces those applications that have been approved for funding to remove equipment and services that pose a national security risk.
 - On July 18, 2022, the FCC’s Wireline Competition Bureau (“WCB”) released a [Public Notice](#) announcing those applications that have been approved for reimbursement through the Secure and Trusted Communications Networks Reimbursement Program (“Reimbursement Program”) to remove and replace certain equipment and services that pose a national security risk. The Public Notice explains that because the requests for funding exceed the \$1.9 billion that was made available by Congress for the Reimbursement Program, the WCB implemented the prioritization scheme required by Congress, which requires funding to be allocated first to approved “Priority 1” applicants that have two million or fewer customers. Priority 1 applicants have submitted approximately \$4.64 billion in cost estimates that have been determined to be reasonable, and funding was prorated to that group on an equal basis, using a pro-rata factor of approximately 39%.
 - Prior to the release of the Public Notice above, on July 15, 2022, FCC Chairwoman Rosenworcel submitted [letters](#) to Congress with an update on the amount of supplemental funding needed to meet total demand for the Reimbursement Program as well as the FCC’s next steps for the program. Consistent with the Public Notice, the letters explain that there is a current shortfall of approximately \$2.8 billion for the first prioritization group – i.e., approximately \$4.64 billion minus \$1.9 billion. They add that, to fund all reasonable and supported cost estimates within the first and third prioritization groups (there were no applications that fell in the second group) and cover administrative expenses, the Reimbursement Program will require \$4.98 billion, reflecting an overall shortfall of \$3.08 billion. The FCC will continue to update Congress through periodic reports.
- The U.S. Government Accountability Office releases a report on semiconductors, which provide critical data storage and communications capabilities for mobile phones and other

devices.

- On July 27, 2022, the U.S. Government Accountability Office (“GAO”) released a [Report](#) on the semiconductor supply chain and policy options to reduce risks and mitigate against future shortages. The policy options – which would serve as a supplement to the financial incentives in the 2021 Creating Helpful Incentives to Produce Semiconductors for America (“CHIPS”) Act – are categorized into five groups: research and development (“R&D”), supply chain strengthening, workforce development, manufacturing capacity, and trade and international coordination. While experts interviewed for the Report stated that there is no single policy option that would be sufficient to reduce supply chain risks and mitigate future shortages, they widely agreed that workforce development was one area that needs action. Experts also discussed other priorities, including national security, economic competitiveness, and increased resilience. The GAO notes that a forthcoming report will assess the types of actions the federal government is taking to address semiconductor supply chain risks and describe how agencies are implementing recent legislative requirements.
- FCC Chairwoman Rosenworcel underscores the agency’s efforts to promote competition in the communications sector.
 - On July 11, 2022, following the first anniversary of President Biden’s [Executive Order on Promoting Competition in the American Economy](#), FCC Chairwoman Rosenworcel released a [statement](#) highlighting the FCC’s work to strengthen competition in the communications sector. She noted that the agency is “expanding the reach of next generation 5G networks to more parts of the country” and “developing more opportunities for companies to build communications equipment here at home.”

Legislative Efforts

- The Senate and House pass a bill that would invest \$280 billion to support U.S. manufacturing capabilities, R&D, and technology innovation.
 - On July 27 and 28, 2022, the Senate and House, respectively, passed the [CHIPS and Science Act](#). If enacted, the bill would, among other things, appropriate \$52 billion to support the U.S. semiconductor manufacturing ecosystem and workforce development initiatives. It would also appropriate \$1.5 billion for the Public Wireless Supply Chain Innovation Fund to support the development of Open Radio Access Network technologies to help accelerate the deployment of 5G. The bill has been sent to the President’s desk for his signature.
- The House passes a bill that would make additional mid-band spectrum available for commercial use, shared federal use, or a combination thereof and extend the FCC’s auction authority.
 - On July 28, 2022, the House passed the [Spectrum Innovation Act of 2022](#), which, if enacted, would require the FCC to auction at least 200 megahertz of spectrum in the 3.1-3.45 GHz band for commercial use, shared federal use, or a combination thereof within seven years of enactment. It would also permit the President to modify or

withdraw any assignment to a federal station in the 3.1-3.45 GHz band after November 30, 2024 in order to make the spectrum available for auction, so long as the modification or withdrawal would not comprise the primary mission of a federal entity operating in the band. In addition, the bill would extend the FCC's general auction authority, which is set to expire on September 30, 2022, to March 31, 2024. Finally, the bill would use the 3.1-3.45 GHz auction proceeds to pay for upgrades to next-generation 911 and help fund the Secure and Trusted Communications Networks Reimbursement Program (see above). The bill is now in the Senate.

- The House passes a bill that would provide statutory authority for NTIA's test center.
 - On July 26, 2022, the House passed the [Institute for Telecommunication Sciences \("ITS"\) Codification Act](#), which would amend the NTIA Act to provide statutory authority for ITS. In addition, it would require NTIA to establish an initiative at ITS to support the development of emergency communication and tracking technologies. The bill is now in the Senate.
- The House passes a bill that would promote U.S. leadership in 5G standards-setting organizations.
 - On July 14, 2022, the House passed the [Promoting United States International Leadership in 5G Act of 2021](#). The bill, if enacted, would require the President to establish an interagency working group to coordinate with allies and international partners and enhance U.S. leadership in international 5G standards-setting bodies. It would also promote secure supply chains and 5G networks by monitoring China's involvement in international standards-setting bodies. The bill is now in the Senate.

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