



July 8, 2024

House Energy & Commerce Committee
Communications & Technology Subcommittee

Subject: Submission for the Record
July 9, 2024 hearing, "Fiscal Year 2025 Federal Communications Commission Budget."

Dear Chairs McMorris Rodgers and Latta, Ranking Members Pallone and Matsui, and Members of the Committee,

We are writing in regard to the July 9, 2024 hearing on the FCC's 2025 budget and other oversight matters.

Section A: Questions for July 9 Hearing

We respectfully request that you ask FCC Chair Rosenworcel the following questions:

1. What is the status of FCC complying with a court order issued by the US Court of Appeals DC Circuit in 2021¹ to provide a reasoned explanation for retaining its 1996 limits for human exposure to radiofrequency (cell tower radiation)? When does FCC expect to complete its compliance with the court order?

¹ [https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/\\$file/20-1025-1910111.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/$file/20-1025-1910111.pdf)

2. Will the FCC complete a new rulemaking to update its radiofrequency guidelines for human exposure? Such a rulemaking would help assure the public that when the FCC uses federal preemption to force deployments on local governments, that the FCC has determined safety for children and families. Current wireless exposure standards are based largely on 40-60 minute exposures of a small number of monkeys and rats (not more than a dozen each), over 40 years ago.² GAO first recommended that the FCC revisit these limits back in 2012 and the FCC has not yet done so.³

Section B: Budget Proposals

3. We request you consider the following limitation amendment in the FY2025 FCC budget:

Until the FCC complies with, and satisfies the requirements contained in, the mandate issued October 5, 2021 by the U.S. Court of Appeals D.C. Circuit in case number 20-1025, the budget authority for Spectrum Auctions Program and related cost recovery reimbursement shall be limited to the level of FY2023, which was \$103,900,000.

The [FCC proposes](#) a core budget of \$448 million, plus an additional \$139 million for carrying out spectrum auctions.⁴ The FCC is continuing to spend this \$139 million despite abrogation of its obligations under the law.

For almost 3 years now, the FCC has ignored the US Court of Appeals DC Circuit order, issued in the successful lawsuit *Environmental Health Trust et al. V. FCC*, to provide an explanation for why the FCC decided not to update its human exposure limits for wireless radiation. The FCC has not considered the latest science for over 25 years, as it is obligated to do under the law. FCC's continuing work to make more spectrum available while failing to update its exposure limits puts all Americans at risk, and is harming millions of Americans.⁵

This limitation amendment would incentivize FCC to follow the law. Complying with laws passed by Congress and the court order is not optional for the FCC – this is an administrative agency acting with impunity while 100% of its budget is paid for by the industry it is supposed to be regulating.

² See page 5 and footnote 8, Environmental Health Trust testimony submitted March 27, Senate Commerce Committee

<https://ehtrust.org/wp-content/uploads/EHT-Testimony-to-Senate-Commerce-Committee-on-S3909-03272024.pdf>

³ Exposure and Testing Requirements for Mobile Phones Should Be Reassessed, GAO-12-771, Jul 24, 2012

<https://www.gao.gov/products/gao-12-771>

⁴ FCC Budget-in-Brief, March 2024

<https://docs.fcc.gov/public/attachments/DOC-401129A1.pdf>

⁵ <https://thenationalcall.org/wp-content/uploads/2024/05/Congressional-Briefing-5-19-24-FINAL.pdf>

4. We urge you to support section 524 in the budget passed by the House Appropriations Committee, which is under consideration today.⁶

Section 524 would prohibit the FCC from using funds to implement its “net neutrality” rule. The FCC’s net neutrality order, via its reclassification of wireless data service as a telecommunications service, will preempt local zoning authority over the deployment of wireless facilities. The FCC is expanding federal preemption to proliferate wireless facilities despite not having completed a rulemaking to update its human exposure guidelines for radiofrequency radiation — that is, without determining safe levels of radiofrequency exposure that will result from these facilities. As was reflected in comments during rulemaking, the FCC could have achieved its net neutrality policy goals for wireless data, either under its Title III authority, or under Title II while exercising forbearance from the provisions that preempt local zoning. The FCC ignored these comments. As such, while we take no position on net neutrality *per se*, we oppose the current net neutrality order until such time as the FCC removes the provisions that expand preemption of local zoning authority over wireless facilities.⁷

Preservation of local zoning authority should be a topic with bipartisan support. The majority has long defended states’ rights and federal overreach. At the same time, minority leadership on E&C has emphasized the importance of local zoning authority over wireless facilities in hearings, as recently as last year.⁸

⁶ <https://docs.house.gov/meetings/AP/AP23/20240605/117405/BILLS-118-SC-AP-FY2025-FServices-FY25FSGGSubcommitteeMark.pdf>

⁷ In its final rule, the FCC readily acknowledged and defended expanded wireless preemption (for example see paragraphs 74, 76). <https://www.fcc.gov/document/fcc-restores-net-neutrality-0> NATOA filed comments supporting net neutrality but opposing local preemption over wireless facilities, and urging the FCC to avoid expanded preemption, writing: "NATOA urges the Commission to forbear the application of Sections 253 and 332(c)".

<https://www.fcc.gov/ecfs/search/search-filings/filing/101172857711583>

National League of Cities filed comments opposing local preemption and urging forbearance.

<https://www.fcc.gov/ecfs/search/search-filings/filing/1215761504735>

BB&K filed comments in the docket on behalf of a local governments coalition, opposing local preemption. (BB&K has acted as counsel over the years to a number of coalitions of local governments bringing judicial challenges to FCC preemption.)

<https://www.fcc.gov/ecfs/search/search-filings/filing/10117786602033>

Wired Broadband et al. filed comments urging Title III or forbearance

<https://www.fcc.gov/ecfs/search/search-filings/filing/121521996449>

along with reply comments.

<https://www.fcc.gov/ecfs/document/1011880442230/1>

⁸ For example, Ranking Member Pallone said on May 17, 2024:

“It is the mayors, and councils, and planning boards, and zoning boards who are responsible for these considerations, and they are on the hook if anything goes wrong or someone gets hurt.”

Line 6826

For additional background on the court case, federal regulatory policy and wireless infrastructure, and the latest science, please see testimony submitted to the Senate Committee on Commerce, Science, and Technology.⁹

Section C: Legislative Proposals

5. Support S.3119, which would nullify the net neutrality order, and introduce similar companion legislation in the House.¹⁰

See #4 above for rationale

6. Condition renewal of spectrum auction authority on FCC updating its radiofrequency limits for human exposure

The Committee may soon be asked to consider Senate legislation renewing FCC auction authority.¹¹ While we oppose the renewal of auction authority, if the Committee moves forward with spectrum legislation, we urge you to incorporate the following legislative text that would require the FCC to complete a rulemaking updating its radiofrequency exposure limits prior to making any further spectrum available for commercial use.

(a) The Commission shall

- (1) within 180 days of the date of enactment of this Act begin a rulemaking to update its radiofrequency exposure limits contained in 47 CFR Part 1 Subpart I, including without limitation the limits in §1.306 and §1.310; and**
- (2) within two years of the date of enactment of this Act complete such rulemaking.**

Such rulemaking shall consider, without limitation, materials submitted at any time prior to the date of this Act in FCC Dockets 13-84, 03-137, and 19-226.

<https://docs.house.gov/meetings/IF/IF00/20230524/116022/HMKP-118-IF00-Transcript-20230524.pdf>

Ranking Member Matsui said on March 24, 2024:

“Local governments in my district are concerned about heavy-handed preemption...I’d encourage the Members of this Committee to reach out to their mayors and city council members. I’m sure they’ll share these concerns.”

<https://docs.house.gov/meetings/IF/IF00/20230524/116022/HMKP-118-IF00-MState-M001163-20230524.pdf>

⁹ <https://ehtrust.org/wp-content/uploads/EHT-Testimony-to-Senate-Commerce-Committee-on-S3909-03272024.pdf>

¹⁰ <https://www.congress.gov/bill/118th-congress/senate-bill/3119>


¹¹ S. 4207 and S. 3909 are currently pending

(b) Notwithstanding anything to the contrary in this Act, [insert legislative section numbers renewing auction authority] shall have no force or effect and shall not go into effect until the FCC completes the rulemaking described in this section.

Making spectrum available for commercial use will automatically trigger the most heavy-handed form of preemption over wireless facilities, known as Section 6409.¹² In fact, as soon as more spectrum is made available, carriers across the country can add almost unlimited additional antennas and additional power output on their existing facilities to broadcast radiofrequency emissions using the new spectrum – despite no US government agency having ever assessed the exposures resulting from these emissions for safety. Hundreds of localities around the country have sued the FCC over its rules implementing section 6409.¹³

Thank you for your attention to these matters. We would be happy to discuss this letter and related matters further with you.

Sincerely,

DocuSigned by:

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¹² Section 6409 states:

“a State or local government may not deny, and shall approve, any eligible facilities request”

See Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 47 USC 1455.

¹³ *Montgomery County et al. v. FCC* (2015 Fourth Circuit, No. 15-1240)

T-Mobile v. San Francisco 658 F. Supp. 3d 773 (N.D. Cal. 2023)

City of Boston et al. v. FCC (pending, Ninth Circuit, No. 20-1301)