

## What's New in Wireless - October 2023

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The wireless industry has revolutionized the way we connect, from facilitating teleworking, distance learning, and telemedicine to allowing the American public to interact virtually in almost all other aspects of their daily lives. Leading policymakers – federal regulators and legislators – are making it a top priority to ensure that the wireless industry has the tools and resources it needs to keep pace with this evolving landscape. This blog provides monthly updates on actions by federal regulatory bodies responsible for communications policy and Congressional efforts to support wireless connectivity. And this month we highlight the addition of a new fifth FCC Commissioner and re-confirmation of two existing Commissioners, bringing the FCC to a full complement for the first time in more than two years.

### Regulatory Actions and Initiatives

*New Fifth Commissioner to Join the FCC.* On September 25, 2023, Anna Gomez was sworn in as the newest FCC Commissioner. According to the FCC's [News Release](#), Commissioner Gomez “brings over 30 years of public and private sector experience to her role and is committed to ensuring we have a vibrant, strong, competitive telecommunications and media marketplace, that promotes U.S. economic prosperity and security while also meeting the needs of all consumers.” She is also the first Latina to serve in this position in over two decades. Of Gomez’s confirmation in

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the Senate, which occurred on September 7, Chairwoman [Rosenworcel](#) commented: “I look forward to working with her to advance the agency’s mission to ensure the benefits of modern communications reach everyone, everywhere and that the United States can continue to lead in the digital age.” Commissioners [Carr](#), [Starks](#), and [Simington](#) also released statements. And Commissioner Gomez wasted no time [announcing](#) her staff appointments shortly thereafter.

*FCC Commissioners Carr and Starks Re-Confirmed.* In addition to the swearing in of Commissioner Gomez, the Senate unanimously voted to confirm both Commissioners Carr and Starks to serve additional terms at the FCC on September 30, 2023. On his confirmation, Commissioner [Starks](#) commented: “I am deeply honored to serve another term on the Federal Communications Commission. Day in and day out, this agency helps build a more innovative, secure, and equitable America.” Commissioner [Carr](#) stated: “Serving on the Commission is a tremendous privilege, and I am humbled by the opportunity to continue working for the American people.” Commissioner [Gomez](#) noted that she has “known” Commissioners Carr and Starks “to be tireless, committed civil servants, and [she] look[s] forward to working alongside them, Commissioner Simington, and Chairwoman Rosenworcel to ensure we have a vibrant, competitive telecommunications and media marketplace that serves all consumers.” Similarly, Commissioner [Simington](#) stated that Commissioners “Carr and Starks are dedicated public servants and [he] look[s] forward to continuing to work with them in the public interest.” Chairwoman [Rosenworcel](#) added that “[w]ith a complete Senate-confirmed Commission, the FCC is now ready to take on our full slate of work and fulfill our commitment to ensuring Americans everywhere have access to the best, most reliable communication services in the world.”

## Federal Funding for Wireless Services

*The FCC Seeks to Refresh the Record on the 5G Fund.* On September 21, 2023, the FCC adopted a [Further Notice of Proposed Rulemaking](#) seeking additional comment on how to implement the 5G fund – which will make up to \$9 billion available in federal funding to ensure the deployment of high-speed, 5G mobile service in eligible areas – in the wake of the FCC’s new

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National Broadband Map. Among other things, the FCC seeks comment on: (i) defining the areas that will be eligible for 5G Fund support; (ii) reassessing the budget for the 5G Fund; (iii) measuring a 5G Fund support recipient's compliance with its public interest obligations and performance requirements; (iv) requiring 5G Fund support recipients to implement cybersecurity and supply chain risk management plans; and (v) determining whether and how the proceeding might create an opportunity to support further deployment of Open Radio Access Network (or Open RAN) technologies. In a [News Release](#) about the Further Notice, the FCC stated that this proceeding will “reignite the Commission’s plan to expand the deployment of 5G service to rural communities that remain trapped on the wrong side of the digital divide.” Comments and reply comments are due October 23, 2023, and November 21, 2023, respectively.

## Wireless Spectrum

*The FCC Seeks Comment on Whether to Evaluate Licensees’ Spectrum Holdings.* On September 22, 2023, the FCC’s Wireless Telecommunications Bureau (“WTB”) and Office of Economics and Analytics (“OEA”) issued a [Public Notice](#) seeking comment on a [Petition for Rulemaking](#) filed by AT&T asking that the FCC establish a “screen” on the amount of mid-band spectrum a licensee of spectrum may hold. The Public Notice seeks comment on whether to initiate a proceeding in response to the Petition. It also seeks comments generally on whether and how the WTB and OEA should recommend to the FCC that it propose amendments to its mobile spectrum holdings rules and policies, in light of evolutions in technology and market dynamics. The deadlines for submitting comments and reply comments are October 23, 2023, and November 8, 2023, respectively.

*The FCC Estimates the Auctions it May Hold in the Upcoming Fiscal Year.* While recognizing that it currently does not have general authority to conduct spectrum auctions, the FCC issued a [Public Notice](#) on September 29, 2023, stating that it has authority to conduct auctions for the lower 3 GHz band (pursuant to the Infrastructure Act) and the 30 megahertz of spectrum to be identified by the Commerce Department pursuant to the 2015 Pipeline Act. In any case, the FCC does not expect to auction either

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in Fiscal Year 2024. The Public Notice also mentions the 12.7-13.25 GHz, 600 MHz, and AWS-3 bands as potential spectrum bands for auction if and when its auction authority is restored.

*The FCC Permits Longer Operations in the 3.5 GHz Band.* The WTB and the Office of Engineering and Technology (“OET”) released a [Public Notice](#) on September 19, 2023, announcing that Spectrum Access System (“SAS”) Administrators for the 3.5 GHz band are permitted to implement a longer Citizens Broadband Radio Service Device (“CBSD”) reauthorization period – up to 24 hours – in geographic areas and portions of the 3.5 GHz band that are outside the scope of current federal operations. The Public Notice was released in response to a [letter](#) filed by the National Telecommunications and Information Administration (“NTIA”) notifying the FCC that SAS Administrators may extend their CBSD authorization periods from 300 seconds to 24 hours. According to NTIA, the reauthorization period extension will help to provide a more stable and predictable spectrum environment for Citizens Broadband Radio Service (“CBRS”) users, while also providing an interference-free environment for federal operations.

*The FCC Certifies Another Spectrum Access System for the 3.5 GHz Band.* In addition to extending the CBSD reauthorization period, the WTB and OET released a [Public Notice](#) on September 22, 2023, certifying RED Technologies (“RED”) as a SAS Administrator for the 3.5 GHz band. RED is now approved for commercial operation subject to ongoing compliance with the FCC’s rules. In particular, RED must: (i) comply with all current and future FCC rules and policies, as well as all instructions issued by the WTB, OET, and the Enforcement Bureau; (ii) demonstrate continued compliance as commercial deployments expand, including by working with other users to demonstrate compliance with protection criteria; and (iii) protect current and future federal incumbent operations in and near the 3.5 GHz band. RED must also submit supplemental filings if it intends to operate in additional U.S. Territories or if it plans to make substantive changes to its system. Further, RED is approved to support spectrum manager leasing of Priority Access Licenses. Its approval is conditioned on ongoing compliance with technical limitations governing the use of the FCC’s Universal Licensing System Application Programming Interface.

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Finally, while RED does not operate its own approved Environmental Sensing Capability (“ESC”), the WTB and OEA approved RED to use Key Bridge Wireless LLC’s ESC to protect federal incumbent operations.

*The FCC Permits 3.5 GHz Operations in Hawaii.* Finally with respect to the 3.5 GHz band, the WTB and OET released a [Public Notice](#) on September 22, 2023, announcing a temporary arrangement with NTIA, the Department of Defense, and the Department of the Navy that will allow CBRS users – including Priority Access Licensees – to begin operating in the 3550-3650 MHz band in Hawaii before ESC sensors are locally deployed. As described in [NTIA’s September 18, 2023 letter](#), under this arrangement, the Navy will temporarily utilize the TARDyS3 portal to schedule and protect its operations in and around Hawaii. The Navy will use three 10-megahertz channels, leaving seven 10-megahertz channels available for CBRS users. However, the Navy will retain priority rights to utilize the remainder of the 3550-3650 MHz band on an “as needed” basis (e.g., for major exercises).

*The FCC Invites Comments on the 3.45 GHz Band Clearinghouse.* On September 22, 2023, the WTB released a [Public Notice](#) seeking comment on whether Summit Ridge Group, LLC – the Reimbursement Clearinghouse for the 3.45-3.55 GHz (“3.45 GHz”) band – satisfies the criteria established in the 3.45 GHz [Second Report and Order](#) and the [3.45 GHz Clearinghouse Selection Process Order](#). Pursuant to the Second Report and Order, the Reimbursement Clearinghouse must be able to demonstrate its ability to perform its required duties, including: (i) engaging in strategic planning and adopting goals and metrics to evaluate its performance, (ii) adopting internal controls for its operations, (iii) using enterprise risk management practices, and (iv) using best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. Comments and reply comments are due on October 10, 2023, and October 20, 2023, respectively.

*The FCC Denies a Petition Related to Invoices and Disputes in the C-band Proceeding.* On September 8, 2023, the WTB released an [Order](#) denying AT&T’s [Petition for Reconsideration or Clarification](#) (“Petition”) of the [RPC Appeals Procedure Public Notice](#), which established procedures for filing and processing challenges to decisions made by the C-band Relocation



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Payment Clearinghouse (“RPC”). Among other things, AT&T had asked: (i) the FCC to clarify that the 20-day limit on filing initial notices of objection to an invoice with the RPC is subject to the “discovery rule” and permit parties to seek a waiver of the 20-day deadline for complex invoices; and (ii) the WTB to clarify that, because only an incumbent seeking reimbursement can produce receipts and work orders that prove whether reimbursement is valid, the burden of proof in multi-party dispute appeals should always rest on the incumbent. In denying the requests, the WTB found that given the ample amount of public information related to the C-band transition plans and expenses of satellite and earth station operators, the 20-day window provides licensees with sufficient time to determine whether to object to a specific RPC decision. The broad application of AT&T’s “discovery rule” and waiver proposals would also add uncertainty and complexity to the dispute resolution and disbursement processes. Finally, the WTB maintained the burden of proof standard established in the RPC Appeals Procedures Public Notice because allowing an eligible party to challenge an RPC decision without a commensurate burden of proof would create potential for abuse and baseless disputes.

*The FCC Rejects a Request to Revise Payments to a C-band Earth Station.* On the same day it released its decision on AT&T’s C-band Petition noted above, the WTB released a [Memorandum Opinion and Order](#) denying Mongoose Works, Ltd.’s (“Mongoose”) appeal of the C-band RPC’s decision to adjust downward part of Mongoose’s reimbursement claim based upon its August 12, 2020 lump sum election. The WTB found that Mongoose failed to meet its burden of proof to demonstrate that the RPC made an incorrect determination in its June 1, 2022 [Decisional Memorandum](#), which re-classified two Large Multi-beam (5+ beams) Earth Station Antennas (“LMBEAs”) as Receive-Only Earth Station Multi-feed Antennas instead of LMBEAs, because Mongoose neither demonstrated a rationale nor a factual error in the RPC’s decision. The WTB also separately and independently found that the RPC both correctly interpreted the relevant FCC rules, guidance, and policies and applied them to the antennas in question. Finally, the WTB found Mongoose’s alleged procedural issues unavailing.

*The FCC Notifies Advantage Spectrum of Refund of Bid Withdrawal*

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*Payment.* On September 22, 2023, the OEA [notified](#) Advantage Spectrum, L.P. (“Advantage Spectrum”) of a refund in connection with its bid withdrawal payment for 11 licenses in Auction 97 – the auction of AWS-3 spectrum, which concluded in 2015. Under the FCC’s rules, a bidder that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment. For 11 of Advantage Spectrum’s bid withdrawals, SNR Wireless LicenseCo, LLC (“SNR Wireless”) and Northstar Wireless, LLC (“Northstar Wireless”), each of whom claimed a 25% bidding credit, were the winning bidders for the licenses. Therefore, their winning bids were used to calculate Advantage Spectrum’s bid withdrawal payment, which amounted to \$1,975,500. However, after the close of Auction 97, the FCC determined that neither SNR Wireless nor Northstar Wireless was eligible for the claimed 25% bidding credit because the entities are controlled by DISH. Accordingly, their winning bids were adjusted upward to exclude the bidding credit. The OEA recalculated the adjusted bid withdrawal payment for the 11 licenses to be \$0 and refunded Advantage Spectrum its \$1,975,500 bid withdrawal payment.

## Wireless Networks and Equipment

*NTIA Recaps 5G Challenge Winners.* NTIA released a [blog post](#) on October 3, 2023, recapping the 2023 5G Challenge and its winners. The post also highlights the 2022 lessons that were applied to the 2023 Challenge. Specifically, it notes that “[f]lexibility is a necessity for open RAN technology but caused difficulties for the 2022 5G Challenge contestants. While their subsystems complied with different sets of standards and specifications, contestant subsystems did not have a standard set of optional features, which caused inconsistencies. As a result, in 2023 the host lab facilitated pre-integration coordination.” The blog post concludes with: “The 5G Challenge has identified a need for a clear baseline for industry open RAN integration specifications and lab venues for vetting these specifications.”

*The FCC Finds that DISH Has Met its 5G Commitments and Accepts DISH’s Drive Test Methodology.* On September 29, 2023, the WTB released a [letter](#) finding that DISH has met its band-specific 5G commitments and two of its three nationwide 5G commitments. It also

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accepted DISH's proposed [drive test methodology](#) for verifying compliance with its remaining nationwide 5G commitment. Specifically, the WTB found that, as of June 14, 2023, DISH has met its commitments: (1) with respect to its 600 MHz licenses, to deploy a core network and to offer 5G broadband service to at least 70% of the U.S. population; (2) with respect to its AWS-4 and AWS H Block licenses, to offer 5G broadband service to at least 70% of the U.S. population (analyzed on a band-specific basis); and (3) with respect to its Lower 700 MHz E Block licenses, to offer 5G broadband service to at least 70% of the U.S. population covered by those licenses. The WTB also found that DISH met the contingency for automatic, two-year extensions of its final construction milestones – until June 14, 2025 – for each of its AWS-4, AWS H Block, and 700 MHz E Block licenses. Finally, the WTB found that DISH has “deploy[ed] a nationwide 5G network using DISH’s spectrum with . . . (B) At least 15,000 5G sites deployed; and (C) At least 30 [megahertz] of DISH’s downlink 5G spectrum averaged over all DISH 5G sites deployed nationwide.” Now that DISH and the WTB agree on drive-test methodology, DISH has six months to complete its drive testing and submit the report to the FCC.

*The FCC Grants a Waiver of its Rip-and-Replace Deadline and Reminds Participants About Their Status Updates.* The FCC’s Wireline Competition Bureau (“WCB”) released an [Order](#) granting a request submitted by Stealth Communications (“Stealth”) seeking to extend its deadline for removing and replacing equipment and services that pose a national security risk from September 29, 2023, to March 29, 2024 (as Stealth requested). The WCB explained that grant of the request was based on the supply chain issues faced by Stealth. Other independent bases in support of Stealth’s request were not addressed, but factors the FCC considered included Stealth’s actions to mitigate the supply chain issues and Stealth’s consistent reporting of supply chain issues in its quarterly status updates. The WCB also acknowledged that other requests for extension have been submitted and added that these other extension requests will be addressed through subsequent action. The WCB noted that it acted on Stealth’s request first because Stealth has the earliest-terminating disposal term. Finally, the WCB released a separate [Public Notice](#) on September 8, 2023, reminding rip-and-replace support recipients that they must submit their next status update by October 9, 2023, through the [Supply Chain](#)



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## Reimbursement Program Online Portal.

*The FCC Declines to Make Additions to its List of Equipment and Services that Pose a National Security Risk.* On September 29, 2023, the FCC's Public Safety and Homeland Security Bureau ("PSHSB") released a **Public Notice** announcing that there have been no updates to the list of covered communications equipment and services that are deemed to pose an unacceptable risk to the national security of the United States ("Covered List") and therefore require removal. The PSHSB is required to update the Covered List, which was last updated on September 20, 2022, whenever any executive branch interagency body with appropriate national security expertise, the Department of Commerce, or an appropriate national security agency makes a specific determination that the equipment or service poses or is capable of posing an unacceptable risk to national security, among other circumstances. The PSHSB explained that the FCC has not received any specific determination from the enumerated sources listed above. Therefore, the PSHSB made no changes.

*The FCC Extends the Deadline for Submitting Comments on its Voluntary Cybersecurity Labeling Program.* In response to two Motions for Extension of Time, the PSHSB released an **Order** on September 15, 2023, extending the time to file comments on the FCC's proposed voluntary cybersecurity labeling program. Comments and replies will now be due October 6, 2023, and November 10, 2023, respectively.

*Final Winners of the 5G Challenge Announced.* On September 21, 2023, NTIA **announced** the final winners of the **2023 5G Challenge** and its \$7 million total prize purse. Two teams successfully completed Stage Four testing on mobility: (i) Lions-NewEdge-Mavenir-Radisys; and (ii) Capgemini-JMA Wireless-QCT/Benetel. But a tiebreaker determined that Lions-NewEdge-Mavenir-Radisys was the mobility prize winner, and they were awarded the largest prize of \$3 million. The following winners were also announced:

- Wrap-around Emulation Prizes of \$100,000 to Capgemini, Fujitsu, GXC, JMA Wireless, Lions, Mavenir, NewEdge, QCT/Benetel and Radisys;

- Multi-Vendor End-To-End (E2E) Integration 1st place prize of \$750,000 and additional lab time to Capgemini and QCT/Benetel;
- Multi-Vendor End-To-End (E2E) Integration 2nd place prize of \$250,000 to Radisys and Lions;
- Two Best in Show SBOM and VEX winners of \$100,000 and security testing to Fujitsu and JMA Wireless; and
- Best in Show Collaborator winner of \$20,000 and security testing to Lions.

According to Assistant Secretary of Commerce and NTIA Administrator Alan Davidson: “This year’s 5G Challenge winners, through their groundbreaking interoperability and mobility demonstrations, have provided a glimpse of that future. I congratulate the winners and all participants for their work in advancing this field.”

## Legislative Efforts

*Senate Passes Bill that Would Require the FCC to Release Pending 2.5 GHz Licenses.* On September 21, 2023, the Senate passed the **5G Spectrum Authority Licensing Enforcement Act** (“5G SALE Act”), which would, if enacted, grant the FCC temporary authority to issue the remaining licenses won in the 2.5 GHz auction (Auction 108). Senator John Kennedy, who introduced the bill, noted that the bill “offers a simple solution for providing rural Americans with access to broadband by giving the FCC the authority to finish transferring already auctioned spectrum to companies who offer 5G coverage.”

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