

# What's New in 5G - November 2020

November 02, 2020 | Blog | By [Russell H. Fox](#), [T. Scott Thompson](#), [Angela Y. Kung](#), [Daniel P. Reing](#), [Christen B'anca Glenn](#)

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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

#### Mid-Band Spectrum

- The FCC issues the first set of 2.5 GHz licenses to facilitate commercial wireless services in rural Tribal areas.
  - On October 23, 2020, the FCC **announced** that it issued the first set of licenses through the 2.5 GHz Tribal Priority Window to Tribes throughout the U.S. to help bridge the digital divide. Of the 157 applications that were **accepted for filing**, 154 applications were granted. The licensees will be provided with exclusive use of up to 117.5 megahertz of spectrum in the 2.5 GHz band for commercial services.
- The FCC continues to move to clear and auction spectrum in the C-band for 5G services.
  - On October 30, 2020, the FCC’s International Bureau released a **Public Notice** announcing the completion of its review of the lump sum elections submitted by incumbent earth station operators relocating from the C-band. Out of the 1,511 lump sum elections made, the Bureau **found** that 1,457 elections (96.4% of total elections) satisfy the basic requirements to qualify for those elections. The Bureau denied 37 lump sum elections (2.4% of total elections) and conditionally accepted the remaining 17 lump sum elections, contingent on those entities making filings to correct information in their elections and/or the FCC’s records on or before November 9, 2020.
  - On October 23, 2020, the International Bureau also released an **Order** resolving waiver requests to permit incumbent C-band earth station operators to add existing co-located antennas for interference protection in the 4.0-4.2 GHz portion of the band. The Order also addresses requests from earth station operators for technical errors, certification issues, unregistered earth stations, and untimely payment of application fees.
  - The Wireless Bureau released an Order on October 22, 2020 approving the eligible space station operators’ selection of CohnReznick, and subcontractors Squire Patton Boggs and Intellicom Technologies, as the C-band Relocation Clearinghouse.
- The FCC announces the deadline to transition grandfathered wireless broadband operations in the 3650-3700 MHz band.
  - On October 16, 2020, the FCC released a **Public Notice** reminding licensees of the October 17, 2020 deadline to transition their legacy 3.65 GHz operations to the new Part 96 rules governing the 3.65-3.7 GHz band, which include being able to access a Spectrum Access System. The FCC also released an **Order** approving several legacy licensees’ waiver requests for additional time to transition to the Part 96 rules.
- The FCC gets ready to consider an item to modernize the 5.9 GHz band for unlicensed services like Wi-Fi as well as for automotive applications.
  - On October 28, 2020, the FCC released a draft **Order and Further Notice** that would, among other things, repurpose the lower 45 megahertz of the band (5.850-5.895 GHz) for unlicensed use and require the Intelligent Transportation System (“ITS”) radio service to use cellular vehicle to everything-based technology in the upper 30 megahertz of the band (5.895-5.925 GHz). It would also propose rules for outdoor operations in the unlicensed lower 45 megahertz portion of the band once

ITS operations are no longer in those frequencies, and it would seek comment on whether the FCC should designate additional spectrum for ITS in the future. The FCC will consider the item at its November open meeting.

- In anticipation of the FCC's action on the 5.9 GHz band, NTIA released a technical report regarding the protection of federal operations in the band from the new commercial operations proposed by the FCC. NTIA stated that operations proposed by the FCC must protect higher-priority federal operations in the band, such as fixed and mobile radars and airborne transponders. For ITS, NTIA finds that the current number and size of coordination zones can be reduced. In addition, NTIA requests certain restrictions on outdoor and indoor use of unlicensed devices to protect federal users.

### 5G Funding

- The FCC **establishes** a \$9 billion fund to support 5G services in rural areas.
  - On October 27, 2020, the FCC adopted an **Order** establishing the 5G Fund for Rural America, which will make available up to \$9 billion in federal subsidies over 10 years to bring voice and 5G broadband services to unserved rural areas. The funds will be made available in two phases, with Phase I making available up to \$8 billion nationwide to all eligible rural areas that lack unsubsidized 4G LTE and 5G broadband service, and Phase II making available at least \$1 billion (plus any funds left over from Phase I) to specifically target the deployment of technologically innovative 5G networks that facilitate precision agriculture.

### 5G Networks and Infrastructure

- The FCC takes additional action to secure 5G networks.
  - On October 14, 2020, the FCC **announced** that it entered into a **Memorandum of Understanding** with the U.S. Agency for International Development ("USAID") to promote secure and open 5G networks in the developing world. The announcement notes that the parties will promote open, interoperable, reliable, and secure Internet and digital infrastructure and advance interagency coordination on network security in developing countries, and that this coordination is consistent with the National Strategy to Secure 5G, the FCC's 5G FAST Plan, and the USAID Digital Strategy.
- The FCC takes additional action to ease the deployment of wireless networks
  - At its October 27, 2020 meeting, in response to a request by Wireless Infrastructure Association, the FCC adopted a Report and Order revising its rules implementing Section 6409(a) of the Spectrum Act of 2012, which provides that state and local governments may not deny certain requests to modify existing wireless structures that do not substantially change the physical dimensions of the structures.
  - Although the final Report and Order has not been released, based on the draft of the Report and Order combined with statements by the Commissioners, it appears that the revised rules provide that excavating or deploying transmission equipment in an area no more than 30 feet beyond existing site boundaries will not create a substantial change to the physical dimensions of the tower or base station. As a result, such modifications are entitled to protection under Section 6409(a). In that respect, the change is consistent with the current Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, which provides that excavation or deployment within the same limited area beyond a site boundary generally does not warrant federal historic preservation review of a collocation. According to the FCC's Press Release, the Report and Order also defines site boundaries in a manner that appropriately reflects prior state or local government review.
  - The update to the FCC's rules will promote the accelerated deployment of 5G and other advanced wireless services by facilitating the collocation of antennas and associated equipment on existing infrastructure.

### Spectrum Sharing

- The Department of Defense releases a study that supports spectrum sharing to facilitate access to commercial spectrum.
  - On October 29, 2020, the Department of Defense ("DoD") released an **Electromagnetic Spectrum Superiority Strategy** that discusses how spectrum sharing with commercial operations is a critical priority for the agency. In particular, the strategy says that "sharing should include implementation of dynamic and bi-directional sharing for facilitating access to commercial spectrum while addressing the cybersecurity risk of an information sharing infrastructure outside of the DoD Information Enterprise."

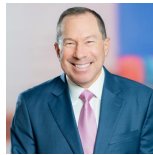
### In the Courts

- On October 22, 2020, the Ninth Circuit denied the petitions for rehearing or rehearing *en banc* filed by local government and utility industry parties hoping to reverse the court's August 12, 2020 *City of Portland v. U.S.* decision that largely affirmed the FCC's 2018 Declaratory Rulings addressing the deployment of wireless facilities.

## Legislative Efforts

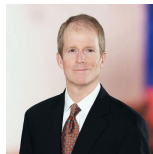
- The House and Senate introduce bills that would require the FCC to auction the 3.45-3.55 GHz band by the end of next year.
  - Representatives Walden, Latta, and Guthrie and Senators Wicker and Thune introduced the **Beat CHINA for 5G Act of 2020** on October 6 and 19, respectively. If enacted, each bill would require NTIA to remove or modify its operations in the 3.45-3.55 GHz band so that spectrum in the band can be made available for commercial use. They would also require the FCC to commence an auction for spectrum in the band by December 2021, which the FCC is **currently contemplating**. Auction proceeds would cover 110% of federal relocation or sharing costs. The requirements overlap actions the FCC is already taking in a proceeding governing the band. The bills are now in committee in both chambers.
- The House and Senate introduce bills that would direct the FCC to establish a new opportunity for Tribal entities to obtain 2.5 GHz spectrum.
  - Senator Warren and Representative Haaland introduced the **Extending Tribal Broadband Priority Act of 2020** on October 19 and 23, respectively. Each bill would require the FCC to open a new Tribal Priority Window for the 2.5 GHz band (see above) within 30 days of enactment to allow tribes additional time to apply for available spectrum in the band. The window, which would be established under the same terms and conditions as the **initial Tribal Priority Window**, would remain open for 180 days. The FCC had earlier opened a window for Tribal entities to apply for 2.5 GHz licenses, but that window closed on September 2, 2020. The bills are now in committee in both chambers.

## Authors



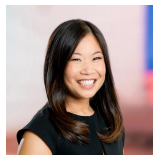
**Russell H. Fox**, Member

Russell H. Fox is a wireless communications attorney at Mintz. He guides clients through federal legislative, regulatory, and transactional matters. Russell also participates in FCC proceedings, negotiates spectrum agreements, and represents clients in spectrum auctions.



**T. Scott Thompson**, Member / Chair, Communications Infrastructure Litigation Practice

Scott serves as Chair of Mintz's Communications Infrastructure Litigation Practice and represents clients in legal, regulatory, and policy matters involving telecommunications networks.



**Angela Y. Kung**, Member / Chair, Technology, Communications & Media Practice

Angela Y. Kung draws on significant knowledge of the wireless regulatory landscape and experience at the FCC to advise clients on FCC rules and procedures. With particular expertise on spectrum use policies and auction procedures, she has shepherded Mintz's clients through several FCC auctions related to next-generation 5G wireless technologies and routinely advocates on behalf of clients to help ensure that the agency's rules align with their interests.



**Daniel P. Reing**, Member

Daniel Reing is a Member in the Mintz Technology, Communications & Media Practice who provides strategic regulatory and litigation counsel to benefit companies in the communications industry. Clients in the cable, broadband, and wireless sectors rely on Dan's counsel to help advance key projects and achieve their goals.



**Christen B'anca Glenn, Of Counsel**

Christen B'anca Glenn is a Mintz attorney who advises communications and technology clients on regulatory and compliance matters before the FCC.

## More Viewpoints

FCC Establishes \$9 Billion Fund to Support 5G Services in Rural America

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