

# Height Commentary

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## Spectrum Policy

### Bipartisan C-Band Letter Largely Benign, but Shows C-Band Is on Congress' Radar

#### THE TAKEAWAY

Senators Jerry Moran (R-KS) and Tom Udall (D-NM) sent a [letter](#) on November 13 to Federal Communications Commission (FCC) Chairman Ajit Pai regarding the ongoing C-band proceeding. In the letter, the Senators urge the Commission to ensure that C-band end-users, such as TV broadcasters, are protected against any interruption of service and are fairly compensated for costs associated with the clearing process. In our view, this letter does not portend a bipartisan effort in Congress to derail the market-based approach we expect the FCC to adopt out of concerns over a windfall; the letter made no mention of windfalls and generally commends the FCC on its concerns for end-users to-date. However, the fact that the Senators spoke out at all suggests to us the issue is now on Congress' radar. As we noted in our [August 20 report](#), one of the risks to the market-based proposal is rural broadcasters working to make the proposal a political lightning rod for Congress. Given this, we will be keeping an eye on Congress for any new developments. Our core thesis remains unchanged: we expect the FCC to release a final order in mid-2019 allowing C-band operators to negotiate private-market deals to clear 200 MHz of C-band spectrum over the next three years, and a total of 300 MHz over the next seven to eight years. For more detailed analysis of the C-band proceedings, please see our [July 11](#), [August 20](#), [October 10](#), and [November 2](#) reports.

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## **We consider the Senators' letter as largely benign for C-band operators at this time**

As we mentioned above, we believe the letter from Senators Moran and Udall is relatively benign on its face. While the Senators state that the FCC “must consider whether sufficient spectrum will remain available to accommodate today’s C-band services, whether other transmission capacity could provide an equally reliable, available, affordable, and resilient alternative, whether new uses of the band could result in harmful interference to existing services, and how to reimburse C-band earth station operators for costs incurred,” they also comment that it is “reassuring that the FCC is seeking comments on appropriate questions related to the protection of these incumbents and their customers in the proceeding.” In addition, they go on to say they “support the FCC’s rigorous examination of new and innovative uses of the C-band spectrum.”

More importantly for C-band operators, in our view, is what the letter does not say. While many investors believe that Congress would find untenable an FCC approach that allows C-band operators to reap windfall proceeds to the tune of billions of dollars for spectrum for which they did not pay, this letter does not even broach the subject of windfalls.

As we detailed in our [August 20 report](#), the FCC has no legal authority take a portion of the proceeds from private-market transactions, so the only way for the federal government to receive anything would be for Congress to pass new legislation either allowing the FCC to take a piece of the proceeds or requiring an auction in which the FCC would keep all of the net proceeds. Given that the letter does not mention the windfall issue, we do not believe investors should have any immediate concerns around Congress derailing the market-based approach or requiring the FCC to take a portion of the proceeds from C-band operators.

## **C-band is now on Congress’ radar, slightly increasing the risk of new legislation**

While we do not see the letter as an indication that Congress intends to act in the near future, the fact that Senators even spoke out on the issue indicates that the C-band has now earned some attention from Congress. In our [August 20 report](#), we highlighted two issues that could increase the risk that Congress takes some form of action in the C-band proceeding: (1) the potential impacts of clearing the C-band on rural cable providers and (2) public outcry against handing a windfall to foreign companies.

We see the potential impacts of clearing the C-band on rural cable providers as a possible political lightning rod for the market-based proposal. Given our expectation that 300 MHz of spectrum is ultimately cleared, we believe it is possible for opposing parties to argue that squeezing C-band end-users into 200 MHz from 500 MHz could increase competition for transponder capacity, and therefore pricing, for media distribution services in the band. If prices rise materially, we believe more densely populated urban areas with access to fiber could switch to fiber-based content delivery. Given that these urban areas support most of the cost of transponder capacity, a switch to fiber could shift the cost burden to rural areas. This could lead to a bipartisan effort in Congress to limit the amount of spectrum cleared through new legislation, reducing the proceeds available to the C-band operators.

To that end, Senators Moran and Udall are from Kansas and New Mexico, respectively, and mention in their letter that C-band is important for content delivery “particularly in rural areas.” Additionally, we believe that a bipartisan push to limit the amount of spectrum cleared could increase the risk that Congress takes a “while we’re at it” mentality, where legislators also authorize the FCC to take a portion of the proceeds since they are passing a bill anyway.

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While House Democrats are the most likely to initiate a bill that would limit the amount of spectrum and/or authorize the FCC to take some of the proceeds, we do not believe this legislation would make it out of the Republican Senate. If this legislation did pass Congress, there is little certainty that President Trump would sign it into law, especially considering Trump's recent [memo](#) that makes freeing up spectrum a national priority.

Another issue that could drive Congress to interfere in the C-band proceeding is outcry against allowing foreign companies to reap a windfall from U.S. spectrum for which they never had to pay. Whether opponents of the proposal were to mount a public awareness campaign or directly lobby members of Congress, the pressure could spur Congress to draft legislation preventing such a windfall by granting the FCC authority to take a portion of the proceeds or requiring the FCC to auction the spectrum instead of allowing the market-based approach.

To reiterate, at this point, we do not believe such legislation could pass Congress, but we believe the bipartisan letter to Chairman Pai certainly increases such a risk, albeit only slightly.

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