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MARKUP OF:

H.R. 4889, THE KELSEY SMITH ACT OF 2016;

H.R. 4167, KARI'S LAW ACT OF 2015;

H.R. 4884, CONTROLLING THE UNCHECKED AND RECKLESS BALLOONING OF THE
LIFELINE FUND ACT (CURB LIFELINE);

H.R. 4111, RURAL HEALTH CARE CONNECTIVITY ACT OF 2015;

H.R. 4190, SPECTRUM CHALLENGE PRIZE ACT OF 2015;

H.R. 3998, SECURING ACCESS TO NETWORKS IN DISASTERS (SANDy) ACT; AND

H.R. 2031, ANTI-SWATTING ACT OF 2015

MONDAY, APRIL 18, 2016

House of Representatives,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 5:08 p.m., in Room 2123, Rayburn House Office Building, Greg Walden [chairman of the subcommittee] presiding.

Present: Representatives Walden, Eshoo, Pallone (ex officio).

Staff Present: Rebecca Card, Assistant Press Secretary; Giulia Giannangeli, Legislative Clerk, CMT; Peter Kielty, Deputy General Counsel; Tim Pataki, Professional Staff Member; Graham Pittman, Legislative Clerk; David Redl, Chief Counsel, Telecom; Charlotte Savercool, Professional Staff C&T; Dan Schneider, Press Secretary; Gregory Watson, Legislative Clerk, C&T; Jen Berenholz, Minority Chief Clerk; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Jerry Leverich, Minority Counsel; Jessica Martinez, Minority Outreach and Member Services Coordinator; Matt Schumacher, Minority Press Assistant; Ryan Skukowski, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Outreach and Member Services.

Mr. Walden. I call to order the Subcommittee on Communications and Technology. I recognize myself for an opening statement.

After a productive and informative legislative hearing on seven pieces of legislation, I am pleased that we are moving quickly to subcommittee markup. It was clear to me after the testimony and questions we heard last week, these bills are all worthy candidates for becoming law.

We heard from the mother of Kelsey Smith, a young woman whose tragic death motivated her family to give law enforcement the tools to prevent something similar from happening to another family. The Kelsey Smith Act would allow law enforcement to more quickly and easily locate victims in emergencies using location data from their cell phone providers.

Now, we also heard from an ACLU attorney, who expressed concerns about privacy violations and potential abuse of the legislation by law enforcement. While I know these concerns are shared by some members here, I believe the law, as drafted, creates a sufficiently narrow set of circumstances in which law enforcement agencies can access these types of data, as well as the very small subset of data that they are able to access.

The bill seeks to balance all interests by protecting the privacy of users, while still providing access when the situation demands it. This bill utilizes existing technology to help law enforcement better respond when someone is in serious danger.

As we discussed last week, it is essential that any legislation

not put the burden of liability on cell phone carriers. So any decision should be left to trained law enforcement, which allows carriers to hand over the data without second-guessing the police on what constitutes an emergency and without fear of a lawsuit.

I will offer an amendment tomorrow that will make sure that a carrier's customer service representative is not faced with making a decision about whether complying with the request from law enforcement opens the company or individual up to liability. When every second counts, this type of decision should not be left to someone who is not trained to make it. Let's not get in the way of law enforcement trying to do their jobs.

The Kelsey Smith Act has been passed in 22 States, including my own State of Oregon in 2014, where it passed unanimously, and was signed into law by a Democratic governor. This doesn't have to be a partisan exercise, and, indeed, it is not.

As Mrs. Smith testified, concerns about abuse of the law and privacy violations simply have not come to fruition. The lifesaving benefits, however, have been seen more than once. I hope that today we can take another step toward a Federal law that will help prevent another family from enduring what the Smiths did.

We will also consider Kari's Law, which requires that multiline telephone systems typically found in hotels, offices, and schools have a default configuration to dial out to 911 without any prefix required. I think that most of the members on this panel share my disbelief when we heard last week that such a problem could exist and, indeed, does

exist.

I think every parent can agree that they never taught their child to dial another number, like another 9 before 911. So we have the opportunity to make sure this confusion never contributes to a tragedy again. With a legislative fix, it is both easy and inexpensive.

Hotels have made significant progress in addressing this problem, but without a uniform and consistent law across the country, those efforts will not eliminate the potential for another caller to try and fail to reach emergency responders when they are needed most. No grandfather should have to hear his grandchild say that she tried dialing 911 but it just didn't work. That is what Hank Hunt heard after the tragic murder of his daughter. Let's fix this.

We are also going to look at a bill from Rep. Austin Scott, which caps the Lifeline portion of the Universal Service Fund. And last week, we heard from a Lifeline recipient who spoke of the importance of connectivity for children and families. I agree with her. Being connected is a vital thing in our digitally-driven world.

So the changes this bill would make do not end that program, and they do not require the FCC to turn people away. All we are asking for is a dose of fiscal discipline. If there is a budget in place, the FCC will be forced to undergo a more serious examination of the problems plaguing the system, and we all know there are problems plaguing the system.

They have taken some steps to address the waste, fraud, and abuse, and I commend the FCC for that, but there is clearly still more that

must be done. Just 2 weeks ago, the FCC issued a proposed \$51 million fine to a company for receiving subsidies for tens of thousands -- tens of thousands -- of duplicate registrants, and that represented a fraction of the alleged fraud. Instead of continually expanding the fund at the cost of rate payers, let's instead take a hard look of what we can do while living within our means.

Now, we will also consider four other bills we discussed at last week's legislative hearing. We heard from several witnesses on the importance of these pieces of legislation, almost all of which are targeted fixes to important problems. As we move forward with these bills, we continue our work towards more modern and effective communications laws. There is no question that this industry is driving our economy in so many positive ways, and it is our job to make sure the law does not unnecessarily stand in the way of that progress.

Again, I would like to thank all the sponsors of these bills, both sides of the aisle, both Republicans and Democrats, for their hard work on these legislative efforts. This markup is another promising step forward in the subcommittee's, I think, very positive legacy.

[The prepared statement of Mr. Walden follows:]

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Mr. Walden. So with that, I will yield to my friend from California, the ranking member of the subcommittee, Ms. Eshoo, for 5 minutes.

Ms. Eshoo. Thank you, Mr. Chairman. Good to see you.

And it seems to me, with three members here, we can get just about everything done, and free everyone up tomorrow.

Mr. Walden. Well --

Ms. Eshoo. Tomorrow, our subcommittee is going to convene to mark up, as you said, seven bills that cover a wide range of issues across the communications landscape. I think some bills are very good; some, I think, need some improvement; and I think one bill will have severe consequences for low-income Americans in how they access basic communication services.

So I want to start with the -- very good. The Rural Health Care Connectivity Act introduced by Congressman Lance would allow skilled nursing facilities in rural communities to apply for support from the Universal Service Fund's rural healthcare program to increase access to affordable broadband Internet service. I think that this is an important and good step.

The Spectrum Challenge Prize Act carried by Congresswoman Matsui, would encourage innovation in new technologies to utilize spectrum more efficiently.

The SANDy Act, which was introduced by Ranking Member Pallone, would make our emergency networks more resilient during times of emergency or natural disaster. And his State really came to understand

what the word "disaster" means. So this is another important and good one.

The Anti-Swatting Act, introduced by Congressman Engel, targets the dangerous and reckless crime of swatting by putting in place strong criminal and civil penalties for offenders. And I think that that is really going to speak volumes to anyone that anticipates undertaking, you know, what is going on.

These are all laudable goals, and they deserve the high priority of our subcommittee.

Next, I think there is room for improvement on two very important measures that will improve our Nation's emergency communications network and strengthen law enforcement's ability to keep us safe.

Kari's Law Act would require multiline telephone systems to provide direct dialing to 911, as you described, Mr. Chairman. As a co-chair of the NextGen 9-1-1 Caucus, location accuracy should be included in this discussion. And I plan to offer an amendment to require a location accuracy proceeding at the FCC within 180 days of enactment of the bill. I also look forward to working with the majority and stakeholders to address some technical concerns that have been raised about this bill, and I know that the majority is aware of some of those concerns. And I think that those are doable.

The Kelsey Smith Act would require wireless carriers to provide law enforcement officials with location information for an individual's device if that person is believed to be in an emergency situation. We need to look closely at the compromise reached on this

bill in the 113th Congress to ensure appropriate privacy protections are included.

Finally, and I know you won't be surprised by this, I am strongly opposed to the CURB Lifeline Act. This bill would impose an arbitrary cap on the FCC's Lifeline program budget of \$1.5 billion, and eliminate the program's support for voice-only mobile services within 2 years, and prohibit Lifeline from being used to subsidize the sale or lease of a mobile phone.

I am struck by the word "lifeline." That is exactly what it is. Why would we curb poor people's lifeline to potential employers, to their healthcare providers, to 911 services? That is very serious, 911 serious -- services, and of course, with their families and friends. So, obviously, I am opposed to that, and I believe that -- I am strongly opposed to it, because this is a social safety net program, and I think we are going to have a vigorous debate on that.

So I am hopeful that both sides of the aisle will -- and I think that we will -- work together to address some of the concerns that I raised.

And, lastly, Mr. Chairman, I have a unanimous consent request for a letter to be placed in the record from the Leadership Conference on Civil Rights and Human Rights.

Mr. Walden. Without objection.

Ms. Eshoo. Thank you, Mr. Chairman. And I yield back.

[The information follows:]

***** COMMITTEE INSERT *****.

[The prepared statement of Ms. Eshoo follows:]

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Mr. Walden. The gentlelady yields back.

The chair recognizes the ranking member of the full committee for opening comments, Mr. Pallone of New Jersey.

Mr. Pallone. Thank you, Mr. Chairman, and also our ranking member, Ms. Eshoo, for holding this markup today on important communication bills, most of which focus on the importance of public safety communications.

Telecom plays a critical role in public safety. Ensuring people have access to communication services can make all the difference during an emergency, which is why I support many of the bills before us today. However, there is one bill included in this markup that actually makes it more difficult for low-income Americans to access these critical communication services, and I will oppose that legislation.

In New Jersey, we learned firsthand during Hurricane Sandy the importance of telecommunications during an emergency. Making a call for help is difficult when the power is out, and when the cell towers are also down, it can be nearly impossible. I would like to thank Chairman Walden for including my Security Access to Networks and Disaster, or the SANDy Act, in today's markup, as well as two other Democratic bills. I hope all these bills will garner bipartisan support.

The SANDy Act would recognize the critical role that all communications providers, broadcasters, cable, and telecom serve in emergencies. But most notably, the bill would ensure consumers have

access to wireless service even if their particular wireless network goes down. We need to be better prepared because no one should be left with silence on the other end of the call when they dial 911.

Another bill we will be considering today, H.R. 2 -- I am sorry -- 4167, or Kari's Law, would also make us all safer. Last week, we heard powerful testimony from Hank Hunt, whose daughter, Kari Dunn, might still be alive today if her hotel's phone simply allowed a call to 911 to go through without dialing an extra 9 first. We should never let that happen again, which is why I support the bill named for Mr. Hunt's daughter. However, this bill can be even stronger. With minor changes, it can save more lives.

Last week, we heard that another problem with these multiline systems is that they don't deliver precise location information to first responders. We heard that a 911 call from the phone industry would tell public safety officials only that we are somewhere in the Rayburn Office Building, a multistory building that spans two city blocks. At a time when every second counts, crucial minutes would tick by as first responders scramble to track down the call. And that is why I urge my colleagues to support a Democratic amendment that would direct the FCC to address this problem.

We also heard moving testimony last week from Melissa Smith, whose daughter was abducted and killed. We heard how it took police 4 days to find her daughter Kelsey after she had been abducted, because that is how long it took the phone company to hand over the location of Kelsey's cell phone. This was tragic, and we should find a bipartisan

way to address this issue, which is exactly what this committee did in the last Congress.

Democrats and Republicans came together to reach consensus on a way forward that would get law enforcement the location information they need quickly, while still safeguarding consumer privacy. And most of these safeguards go into place after a search is over, and the record indicates these kinds of safeguards would not hamper an investigation.

For some reason, however, the Republicans decided to walk away from their own deal. Instead, we have H.R. 4889, a version of the bill that drops all the consumer safeguards Republicans agreed to in the last Congress. But it is not too late. Tomorrow, Democrats plan to offer the version of the Kelsey Smith Act that easily cleared the committee with bipartisan support in the last Congress, and I urge everyone to support this Democratic amendment.

Unfortunately, not all of the bills before us today actually make us safer. As the other bills we are considering today make clear, our phones are the essential lifesaving devices that we keep up -- that keep with us every day. But H.R. 4884 would set a cap on the Lifeline program and effectively rip these essential lifesaving devices from the hands of the people who need help the most.

Last week, Abigail Medina told us about how her phone truly was her lifeline when she was on the program. A Republican witness countered that low-income Americans do not need the program, because they can get online at restaurants or coffee shops. So I ask everyone

here today, would you give up your phone to just go online at a coffee shop? Well, if not, why is that okay for millions of Americans who rely on the Lifeline program to provide them with their basic communication services, including the ability to call 911? The best way to lower the cost of the Lifeline program is to lift people up, not to take away their connection to a better life.

I support the other three bills we are considering today, H.R. 4111, the Rural Health Care Connectivity Act, which would ensure support for communications to skilled nursing facilities. This is a common sense bill that provides these facilities in rural areas with reasonable, comparable rates for telecommunication services provided to those in urban areas.

H.R. 4190, the Spectrum Challenge Prize Act, [audio malfunction in hearing room] creative approach to improving wireless technology by encouraging innovators to find new ways to make sure that the billions of wireless devices worldwide could all connect without interfering with each other.

And, finally, H.R. 2031 from Congressman Engle, would increase the penalties for an abhorrent practice. Swatting is when one person uses a fake caller ID to call a SWAT team against someone else, often as a prank. This behavior should not be tolerated, and I fully support this bill to stop it once and for all.

Sir, again, I yield back, and thank you for putting these bills together today. It is a good combination, other than the Lifeline bill. Thank you.

[The prepared statement of Mr. Pallone follows:]

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Mr. Walden. The gentleman yields back the balance of his time.

And I kind of liked your suggestion, just going ahead and we could, you know, voice vote.

Ms. Eshoo. Do you realize how much we could get done?

Mr. Walden. I don't see anyone else from the subcommittee at this time to make opening statements. So the committee will -- oh, wait a minute. I probably have some official script I am supposed to read here.

So the chair calls up H.R. 4889 and asks the clerk to report.

The Clerk. H.R. 4889, to amend the Communications Act of 1934 to require providers --

Mr. Walden. Without objection, the first reading of the bills is dispensed with. The bill will be opened for amendment at any point. So ordered.

[The bill follows:]

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Mr. Walden. We are now on H.R. 4889. The subcommittee will reconvene tomorrow at 2:00 p.m. And I remind members, the chair will give priority recognition to bipartisan amendments. I look forward to seeing all of you tomorrow.

Without objection, the subcommittee stands in recess.

[Whereupon, at 5:25 p.m., the subcommittee recessed, to reconvene at 2:00 p.m., Tuesday, April 19, 2016.]