

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

**MEMORANDUM**

**January 8, 2016**

**To: Subcommittee on Communications and Technology Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Legislative Hearing on Four Communications Bills**

On Tuesday, January 12, 2016, at 10:15 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a legislative hearing on four communications bills.

**I. BACKGROUND & LEGISLATION**

**A. H.R. 2666, the No Rate Regulation of Broadband Internet Access Act**

Last February, the Federal Communications Commission (FCC) adopted a new set of net neutrality rules designed to protect consumers, free expression, and innovation online.<sup>1</sup> The FCC's decision was rooted in multiple sections of the Communications Act. Most significantly, the Order classified broadband Internet access service as a telecommunications service under Title II of the Communications Act.<sup>2</sup> At the same time, the FCC recognized that many aspects of Title II are not relevant to modern broadband service. Therefore, it chose not to apply over 700 Title II regulations, including rate, tariffing, and last-mile unbundling regulations.<sup>3</sup>

Despite the FCC's clear and unequivocal forbearance from regulating broadband access service rates, some have voiced fears that Title II reclassification makes it easier for the FCC to

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<sup>1</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601 (2015).

<sup>2</sup> *Id.* at 306-435.

<sup>3</sup> *Id.* at 434-543.

regulate broadband rates in the future. FCC Chairman Wheeler has consistently responded that his intention is not to regulate rates.

H.R. 2666, the No Rate Regulation of Broadband Internet Access Act, responds to the fears that the FCC will seek to regulate rates in the future. As such, the bill statutorily precludes the FCC from ever regulating the rates charged for broadband Internet access services. The bill imports the definition of “broadband Internet access service” from the FCC’s most recent net neutrality order. The bill does not define what is meant by “rate regulation,” and as a consequence, some have expressed concern that this language may lead to unintended consequences.

**B. H.R. , the Small Business Broadband Deployment Act**

As part of the FCC’s Protecting and Promoting the Open Order, the FCC enhanced its preexisting broadband transparency rule. In doing so, the Commission noted that “consumers continue to express concern that the speed of their service falls short of advertised speeds, that billed amounts are greater than advertised rates, and that consumers are unable to determine the source of slow or congested service.”<sup>4</sup>

At that time, the FCC chose temporarily to exempt smaller broadband providers from the transparency rule enhancements, citing an abundance of caution regarding concerns that the requirement might be particularly burdensome for small providers.<sup>5</sup> The FCC defined smaller broadband providers as those with 100,000 or fewer subscribers.<sup>6</sup> The FCC further directed its Consumer & Governmental Affairs Bureau to adopt an order by December 15, 2015 regarding whether to make the exemption permanent and whether to modify the Commission’s definition of a smaller broadband provider. On December 15, the Consumer and Governmental Affairs Bureau issued an Order extending the smaller broadband provider exemption for another year. In that Order, the Bureau noted that it was extending the exemption for one year so it could complete the process of estimating the burden the enhancements will place on providers of all sizes and obtain approval from the Office of Management and Budget, as is required under the Paperwork Reduction Act of 1995.<sup>7</sup>

The Small Business Broadband Deployment Act discussion draft would alter the application of the enhanced transparency rule in two ways. First, the discussion draft would make the small broadband provider exemption permanent. Second, the draft would expand the definition of a smaller broadband Internet access provider to those providers with 500,000 subscribers or less or providers with 1,500 employees or fewer.

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<sup>4</sup> *Id.* at ¶ 164.

<sup>5</sup> *See id.* at ¶ 172-175.

<sup>6</sup> *See id.* at ¶ 24.

<sup>7</sup> *Protection and Promoting the Open Internet*, Report and Order, GN Docket No. 14-28 (Feb. 26, 2015) (online at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db1215/DA-15-1425A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1215/DA-15-1425A1.pdf)).

### **C. H.R. 2669, the Anti-Spoofing Act of 2015**

Caller ID is a service used by many Americans to identify telephone callers. Using a practice known as “caller ID spoofing,” callers can deliberately falsify the telephone number and name relayed as the Caller ID information to disguise their identity.<sup>8</sup> Through spoofing, data and identity thieves can extract sensitive and personal information from called parties by making it appear that a call is originating from a person’s bank, credit card company, local police station, or other trusted source. Spoofers and thieves can then use, sell, or share this information with third parties, which could cause harm to the finances or reputation of individuals or organizations.

In December 2010, President Obama signed into law the Truth in Caller ID Act, which gave the FCC the authority to prohibit any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>9</sup> In June 2011, pursuant to a requirement in the Truth in Caller ID Act, the FCC issued a report to Congress with recommendations on how to improve the law. That report included recommendations to broaden the scope of the law to include a prohibition on caller ID spoofing directed at people in the United States by persons outside the United States, and a recommendation to provide further guidance on interconnected Voice over Internet Protocol (VoIP) services. The report also recommended adding text messaging to the list of services covered by the law and requiring legitimate third-party spoofing providers to take steps to verify that their users, such as law enforcement or a women’s shelters, are informed of applicable federal or state laws.<sup>10</sup>

H.R. 2669 would (1) prohibit spoofing by callers outside the U.S. and (2) expand the scope of existing anti-spoofing law to cover new forms of VoIP, as well as text messaging services. The bill is identical to the language that passed the House under suspension in the 113<sup>th</sup> Congress.

### **D. H.R. 1301, the Amateur Radio Parity Act of 2015**

In 1985, the FCC preempted state and local regulations over amateur radio station facilities, determining there was a “strong Federal interest in promoting amateur service communications,” and that state and local regulations that preclude such communications are in “direct conflict with Federal objectives.”<sup>11</sup> At that time, the FCC declined to extend the

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<sup>8</sup> Federal Communications Commission, *Caller ID and Spoofing* (online at [fcc.gov/guides/caller-id-and-spoofing](http://fcc.gov/guides/caller-id-and-spoofing)) (accessed Jan. 6, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> Federal Communications Commission, *Caller Identification Information in Successor or Replacement Technologies* (June 22, 2011) (online at [fcc.gov/document/caller-id-information-successor-or-replacement-technologies](http://fcc.gov/document/caller-id-information-successor-or-replacement-technologies)) (accessed Jan. 6, 2016).

<sup>11</sup> *Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section*

preemption to cover covenants, conditions, and restrictions in deeds and by-laws due to the fact they are privately negotiated agreements.<sup>12</sup> The FCC declined to amend its policy against preemption of such private land use restrictions in 1999, with a Wireless Bureau denial of a petition for rulemaking filed by the American Radio Relay League.<sup>13</sup> The Bureau denied a petition for reconsideration of the issue in 2000,<sup>14</sup> and the full Commission upheld the Bureau's decision in 2001.<sup>15</sup>

In the 2001 decision, the FCC recognized the important role that amateur radio operators play in providing emergency communications, but declined to expand its policy to preempt because petitioners "submitted no specific evidence" that private agreements seriously disrupt the federal regulatory scheme.<sup>16</sup> The FCC did note, nevertheless, that it would act expeditiously to fulfill any congressional directive that mandates an expansion of its existing policies.<sup>17</sup>

H.R. 1301 would direct the FCC to amend its amateur radio rules to prohibit any private land use restrictions that (1) preclude amateur radio communications, (2) fail to reasonably accommodate such communications, or (3) are not the minimum practicable restriction. The bill has the bipartisan support of 116 members, but stakeholders representing homeowner associations have raised concerns with the existing language.

## II. WITNESSES

The following witnesses have been invited to testify:

**Elizabeth Bowles**

President and Chair of the Board

Aristotle, Inc. (on behalf of the Wireless Internet Service Providers Association)

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97.15 of the Commission's Rules Governing the Amateur Radio Service, Order, RM-8763, DA 99-2569 at ¶ 3 (Nov. 19, 1999).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See *Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service*, Order on Reconsideration, RM-8763, DA 00-2468 (Rel. Nov. 15, 2000).

<sup>15</sup> See *Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service*, Memorandum Opinion and Order, RM-8763, FCC 01-372, (Rel. Dec. 26, 2001).

<sup>16</sup> *Id.* at ¶ 8.

<sup>17</sup> *Id.*

**Harold Feld**

Senior Vice President  
Public Knowledge

**Robert McDowell**

Partner, Wiley Rein, LLP  
Senior Fellow, Hudson Institute