

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

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**MEMORANDUM**

**April 11, 2016**

**To: Subcommittee on Communications and Technology Democratic Members and Staff**  
**Fr: Committee on Energy and Commerce Democratic Staff**  
**Re: Legislative Hearing on Seven Communications Bills**

On **Wednesday, April 13, 2016, at 10:15 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing entitled “Legislative Hearing on Seven Communications Bills: (1) H.R. 4889, the Kelsey Smith Act; (2) H.R. 4167, the Kari’s Law Act of 2015; (3) H.R. 4884, the CURB Lifeline Act of 2016; (4) H.R. 4111, the Rural Health Care Connectivity Act of 2015; (5) H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act; (6) H.R. 4190, the Spectrum Challenge Prize Act; and (7) H.R. 2031, the Anti-Swatting Act.”

**I. BACKGROUND AND LEGISLATION**

**A. H.R. 4889, the Kelsey Smith Act**

H.R. 4889, introduced by Rep. Yoder (R-KS), would require—rather than use the permissive standard under current law— wireless carriers to furnish to law enforcement officials the “best available location information” upon request. Wireless carriers would be required to turn over data for (1) a device used to make a 9-1-1 call or (2) a device reasonably believed to be in the possession of an individual that law enforcement reasonably believes is in an emergency situation involving the risk of death or serious physical harm.

The bill is named for Kelsey Ann Smith, who was abducted as she left a discount retail department store one evening in 2007. Law enforcement officials found Kelsey’s body four days later through information obtained from her wireless carrier.<sup>1</sup>

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<sup>1</sup> *Mother of Murdered Teen Pushes for Law Forcing Cellphone Carriers to Release Life-Saving Information*, Fox News (Apr. 13, 2014) (online at

Under the Communications Act, wireless carriers may provide location data to a user's family members during an "emergency situation that involves the risk of death or serious physical harm."<sup>2</sup> In responding to a request, the wireless carrier must determine whether a given situation is an emergency that involves risk of death or serious bodily harm.<sup>3</sup>

At the time of Ms. Smith's abduction, her wireless carrier did not have a policy detailing how to determine if an emergency permitted disclosure.<sup>4</sup> As a result, it took Kelsey's wireless carrier four days to turn over her cell phone's location data to law enforcement. Soon after providing Ms. Smith's cell phone location data, law enforcement was able to locate her body.

During the 113th Congress, the Committee on Energy and Commerce considered another version of the Kelsey Smith Act. Several Democratic members of the committee raised concerns that the version of the bill being considered risked violating consumers' privacy and Fourth Amendment rights. The committee amended the bill to address some of these concerns and then the Committee favorably reported the amended bill.

Specifically, the committee adopted Democratic amendments that would require law enforcement to make a showing closer in line with the standard required under the Fourth Amendment before forcing a carrier to hand over a private citizen's location data.<sup>5</sup> Even with these improvements, civil liberties groups continued to raise concerns that the amended bill could give the government sweeping new powers to the detriment of personal privacy and contrary to the Fourth Amendment.<sup>6</sup>

Despite these continued criticisms, the version of the bill introduced by Congressman Yoder in this Congress omits specific protections that were adopted in the last Congress. Accordingly, the version of H.R. 4889 being considered in this Congress takes a step back from the bipartisan agreement reached in the last Congress.

## **B. H.R. 4167, Kari's Law Act of 2015**

H.R. 4167, introduced by Rep. Gohmert (R-TX) with bipartisan support, requires that all multi-line telephone systems (MLTSs)—the phone systems that are frequently used in hotels and office buildings—made or imported into the U.S. have a default configuration that allows a user to directly call 9-1-1 without having to dial an additional digit, code, prefix, or post-fix. The bill

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<http://www.foxnews.com/politics/2013/04/13/mother-murdered-teen-pushes-for-law-mandating-cell-phone-carriers-to-release.html>).

<sup>2</sup> 47 U.S.C. § 222(d)(4)(B).

<sup>3</sup> *Id.*

<sup>4</sup> *The Kelsey Smith Story - A Story Of Heartache & Hope*, Bryan Bentley, Plymouth-Canton Patch (May 21, 2014) (online at <http://patch.com/michigan/plymouth-mi/bp--the-kelsey-smith-story-a-story-of-heartache-hope>).

<sup>5</sup> H.R. 1575 (113th Cong.).

<sup>6</sup> See e.g., Letter from ACLU to Chairman Fred Upton and Ranking Member Henry A. Waxman, House Committee on Energy and Commerce (July 29, 2014).

also requires MLTS installers to configure the system to provide a notification to a central location when 911 is called, as long as the system can be reconfigured without improvements to the MLTS's hardware. The law would take effect two years after the date of enactment.

H.R. 4167 is named after Kari Dunn, a mother of three, who was fatally stabbed by her estranged husband while visiting him in a hotel near their home. During the altercation, Kari's nine-year-old daughter attempted to dial 9-1-1, but she did not know that the hotel's system required that she dial "9" before "9-1-1." This issue is common among MLTSs often found in hotels and office buildings.<sup>7</sup> Kari's daughter tried to dial 9-1-1 four times, but was unsuccessful each time. Only after guests in an adjacent room heard the attack were the police notified.<sup>8</sup>

The American Hotel and Lodging Association (AH&LA), in March 2014, conducted a survey of U.S. properties regarding emergency dialing procedures.<sup>9</sup> Of the 52,500 U.S. properties that AH&LA contacted, 6000 properties responded. Thirty-two percent of independent properties and 45 percent of franchised properties indicated that guests could dial 9-1-1 directly from their guestrooms.<sup>10</sup>

AH&LA also convened a task force on the issue and developed an industry recommendation. The industry recommendation "encourages lodging properties to review their current telephone systems to ensure that when 9-1-1 is directly dialed, without using an access code, from a guestroom phone, the guest is connected to emergency services personnel and/or a hotel employee."<sup>11</sup> If changes to systems are not "readily achievable," AH&LA encourages properties to "make efforts and develop policies that facilitate summoning emergency services without delay."<sup>12</sup>

Two states have implemented similar laws to the language in H.R. 4889. In Illinois, all MLTSs installed on or after July 1, 2015, must have direct dialing to 9-1-1.<sup>13</sup> In Texas, all business that use MLTSs are required to configure their systems to allow direct access to 9-1-1 and provide notification to a central location when 9-1-1 is dialed, as long as such notification

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<sup>7</sup> *ETX Man Campaigns for 911 Reform After Daughter's Murder*, Sara Machi, KTBS-TV (Apr. 4, 2015) (online at <http://ktbs.com/story/24648521/etx-man-campaigns-for-911-reform-after-daughters-murder?clienttype=generic&mobilecbypass>).

<sup>8</sup> *Children Tried to Save Mother as She was Murdered by Their Dad but Couldn't get Through to 911*, Gail Shortland, Mirror (Apr. 26, 2015) (online at <http://www.mirror.co.uk/news/real-life-stories/children-tried-save-mother-murdered-5568686>).

<sup>9</sup> American Hotel & Lodging Association, *Industry 911 Dial-Through Update* (Mar. 25, 2014) (online at [http://ahla.com/uploadedFiles/Industry911Dial\(2\).pdf](http://ahla.com/uploadedFiles/Industry911Dial(2).pdf)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

<sup>13</sup> Illinois General Assembly, Public Act 098-0875 (Aug. 11, 2014) (online at [ilga.gov/legislation/publicacts/fulltext.asp?Name=098-0875&print=true&write=](http://ilga.gov/legislation/publicacts/fulltext.asp?Name=098-0875&print=true&write=)).

can be made without improvement to the system's hardware.<sup>14</sup> Businesses can seek a yearly waiver of the requirement certifying that compliance is "unduly and unreasonably cost prohibitive."<sup>15</sup> If a business is granted a waiver, however, it must place an instructional sticker "immediately adjacent" to the non-compliant telephones.

### **C. H.R. 4884, the CURB Lifeline Act of 2016**

The Federal Communications Commission's (FCC) Lifeline program has provided discounted and no-charge phone service for low-income Americans for over three decades.<sup>16</sup> Without the Lifeline program, which was created under President Ronald Reagan, many Americans would have no other way to find work, access healthcare, or even call 9-1-1. Today, the average Lifeline recipient is 49 years old, has been on the program for 21 months, and receives support for wireless phone service.<sup>17</sup>

By enrolling in the program, Lifeline participants receive \$9.25 per month toward paying for communications service. Four years ago, the program's total annual cost peaked at providing \$2.2 billion in support for recipients.<sup>18</sup> To help control costs, the FCC took significant steps to address waste, fraud, and abuse within the program by imposing measures such as tougher subscriber eligibility requirements and annual recertification requirements.<sup>19</sup> Due to FCC action, total Lifeline support to program participants has decreased by 68 percent since 2012.<sup>20</sup>

The FCC again took steps to modernize the Lifeline program last month, including adding new cost control measures to further curb waste, fraud, and abuse.<sup>21</sup> The FCC modified the program so that Lifeline participants can now apply their \$9.25 per month support toward

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<sup>14</sup> Texas State Legislature, TX SB No. 788 (May 15, 2015) (online at [capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB00788F.pdf](http://capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB00788F.pdf)).

<sup>15</sup> *Id.*

<sup>16</sup> Federal Communications Commission, *Lifeline and Link Up Reform and Modernization*, News Release, WC Docket 11-42 (Rel. Mar. 31, 2016) (online at [fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0404/DOC-338676A1.pdf](http://fcc.gov/Daily_Releases/Daily_Business/2016/db0404/DOC-338676A1.pdf)) (hereinafter Lifeline Modernization Order News Release).

<sup>17</sup> USAC 2015 Annual Report at 11 (online at [usac.org/\\_res/documents/about/pdf/annual-reports/usac-annual-report-interactive-2015.pdf](http://usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-interactive-2015.pdf)).

<sup>18</sup> Government Accountability Office, *FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program* (Mar. 2015) (GAO-15-335) (online at <http://www.gao.gov/assets/670/669209.pdf>).

<sup>19</sup> Federal Communications Commission, *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket 11-42 (Rel. Feb. 6, 2012) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-12-11A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-11A1.pdf)).

<sup>20</sup> USAC 2015 Annual Report at 41.

<sup>21</sup> Lifeline Modernization Order News Release, *supra* note 17 at 1.

broadband Internet service if they choose.<sup>22</sup> In this most recent Lifeline modernization order, the FCC also set minimum service standards for voice and broadband service. To further deter waste, fraud, and abuse, the FCC established a National Eligibility Verifier.<sup>23</sup> The FCC established a \$2.25 billion annual budget for the program, indexed to inflation.<sup>24</sup> In addition, the order begins to phase out support for standalone mobile voice service starting in December 1, 2019, and ending support by December 1, 2021, except in areas where there is only one Lifeline provider.<sup>25</sup>

Despite the success of the Lifeline program in helping millions of Americans and the FCC's significant progress in rooting out waste, fraud, and abuse, H.R. 4884—recently introduced by Rep. Austin Scott (R-GA)—would impose a host of new restrictions on the program. Most notably, the bill sets a hard statutory cap on the program of \$1.5 billion, which does not allow adjustment for inflation. The bill also phases out all support for standalone mobile voice service in two years, and specifies that Lifeline support could not be used to subsidize the sale, lease, or other provision of a mobile telephone through the program.

#### **D. H.R. 4111, the Rural Health Care Connectivity Act of 2015**

H.R. 4111, introduced by Rep. Lance (R-NJ) and co-sponsored by Rep. Cramer (R-ND) and Rep. Loebsack (D-IA), modifies Section 254 of the Communications Act to add “skilled nursing facilities” to the “health care provider” definition used to administer the FCC’s Rural Health Care Programs under the USF. Congress expanded the FCC’s Universal Service Fund (USF) requirements in 1996 to include support telecommunications and information services for rural health care providers.

The FCC has two main programs under this authority: (1) the Rural Health Care Telecommunications Program and (2) the Healthcare Connect Fund (HCF).<sup>26</sup> The Telecommunications Program provides support and reimbursement to carriers providing services to eligible rural health care providers.<sup>27</sup> The HCF, created in 2012, provides support that allows for a 65 percent discount to eligible healthcare providers for broadband connectivity and

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> FCC Consumer Fact Sheet, The FCC’s Universal Service Rural Health Care Programs (accessed Apr. 6, 2016) (online at [fcc.gov/consumers/guides/fcc%E2%80%99s-universal-service-rural-health-care-programs](http://fcc.gov/consumers/guides/fcc%E2%80%99s-universal-service-rural-health-care-programs)). Two other programs were available in prior years: (1) the Rural Health Care Internet Access program, started in 2003, provided discounts to rural healthcare providers on Internet access, but has been phased out in favor of support through the HCF; and (2) the Rural Health Care Pilot Program, established in 2007, provided support for state- or region-wide healthcare broadband networks. Participants in the pilot program will transition to the HCF as pilot program funds are exhausted.

<sup>27</sup> *Id.*

networks.<sup>28</sup> The Rural Health Care Program had approximately \$279 million in authorized support for 2015.<sup>29</sup> The FCC's current cap on total annual funding for the Rural Health Care Program is \$400 million.<sup>30</sup>

Under the bill, skilled nursing facilities in rural areas would be eligible to receive reasonably comparable rates for telecommunications services provided to their urban counterparts. The bill also stipulates that the FCC's Rural Health Care Programs cap will remain unchanged, but it does not specifically define "skilled nursing facilities."

**E. H.R. 4190, the Spectrum Challenge Prize Act of 2015**

The Administration has promoted the use of prize competitions by Federal agencies to spur innovation and solve tough problems.<sup>31</sup> Section 105 of the America COMPETES Reauthorization Act of 2011<sup>32</sup> expanded the authority of Federal agencies to use prize competitions to further their core missions.

Spectrum is a vital resource and a necessary component to ensure emergency communications, national security, law enforcement, and many other Federal functions. Efficient use and availability of spectrum is needed for the U.S. to maintain its global technology leadership and to spur innovation.

H.R. 4190, introduced by Rep. Matsui (D-CA), would require that the Department of Commerce (Commerce) conduct prize competitions to develop technologies to improve spectrum efficiency that has cost-effective deployment. Rep. Matsui's bill would allow Commerce to work with the private sector to administer the competitions, and for other Federal agencies to assist. It specifically requires the FCC to publish a technical paper on spectrum efficiency that provides criteria for the design of the competitions. The bill caps the prize amount at \$5 million.

**F. H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act**

H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act, introduced by Ranking Member Frank Pallone, Jr. (D-NJ), seeks to ensure the resiliency of the nation's communications networks during emergencies. At its peak in October 2012, Hurricane Sandy knocked off-line nearly 25 percent of the cell sites in its path, with more than 50 percent off-line in the hardest-hit counties. During disasters such as this, communications infrastructure—wireless, wireline, broadcast, and cable—is critical for calls for help and disseminating critical life-saving information.

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<sup>28</sup> *Id.*

<sup>29</sup> USAC 2015 Annual Report at 41.

<sup>30</sup> FCC Consumer Fact Sheet, *supra* note 26.

<sup>31</sup> The White House, *A Strategy for American Innovation* (Feb. 2011) at 1 (online at [slideshare.net/whitehouse/a-strategy-for-american-innovation](http://slideshare.net/whitehouse/a-strategy-for-american-innovation)).

<sup>32</sup> Pub. L. 111-358.

The SANDy Act would ensure that during an emergency, consumers' cell phones work on other carriers' networks if a consumer's own network goes down. The bill would give priority to calls to 9-1-1 services and emergency alerts. It also would increase coordination between wireless carriers, utilities, and public safety officials by creating a directory of the contact information for relevant disaster response officials. The bill would also require the FCC to report to Congress regarding whether additional outage data should be provided in times of emergency.

In addition, the bill requires the FCC to report to Congress on the viability of providing 9-1-1 services over Wi-Fi hotspots during emergencies. Finally, the SANDy Act modifies the Stafford Act to ensure that all communications providers—radio, TV, and phone: (1) have the ability to access relevant disaster stricken areas during emergencies to restore service and (2) are included in the universal credentialing program for essential service providers.

### **G. H.R. 2031, the Anti-Swatting Act of 2015**

H.R. 2031, introduced by Rep. Engel (D-NY), would modify the FCC's rules prohibiting the falsification of caller identification (also known as spoofing) to provide enhanced penalties when an individual uses spoofing in a swatting situation.

The term "swatting" refers to the practice of making a hoax call to 9-1-1 with the aim of inducing a response from law enforcement—a SWAT team in particular.<sup>33</sup> In recent years, swatting has become more common, particularly among the online gaming community. In particular, members of the online community will falsely call in a SWAT team against other players while they play each other online. Typically, swatters will use technology to "spoof" the caller ID information, so the victim's caller ID information is displayed when law enforcement receives the call.

Swatting poses a serious risk to both victims and law enforcement. For example, a police officer was injured in a car accident during an emergency response that turned out to be a swatting incident. Further, some unsuspecting victims—caught off guard when SWAT teams suddenly arrived on their doorstep—have suffered mild heart attacks.<sup>34</sup> Additionally, swatting wastes finite law enforcement resources with thousands of dollars used to respond for each individual instance.<sup>35</sup>

The bill would provide for a criminal violation of a fine and/or imprisonment not more than five years for violations intended to trigger a law enforcement response in the absence of circumstances that would require such a response. The potential imprisonment would increase to not more than 20 years for instances resulting in serious bodily injury. Violators also would be required to reimburse the law enforcement entity for its expenses in responding to the hoax.

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<sup>33</sup> Federal Bureau of Investigations, *The Crime of 'Swatting', Fake 9-1-1 Calls Have Real Consequences* (Sept. 3, 2013) (online at [fbi.gov/news/stories/2013/september/the-crime-of-swatting-fake-9-1-1-calls-have-real-consequences](http://fbi.gov/news/stories/2013/september/the-crime-of-swatting-fake-9-1-1-calls-have-real-consequences)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

## **II. WITNESSES**

### **Panel I**

**Hank Hunt**

Parent of Kari Hunt

**Katie McAuliffe**

Federal Affairs Manager, Americans for Tax Reform  
Director, Digital Liberty

**Abigail Medina**

Trustee  
San Bernardino City Unified School District

**Steve Souder**

Director  
Fairfax County, Virginia 9-1-1 Center

**Melissa Smith**

Treasurer  
Kelsey Smith Foundation and Parent of Kelsey Smith

**Nathan Wessler**

Staff Attorney  
ACLU Speech, Privacy, and Technology Project

### **Panel II**

**Scott Bergmann**

Vice President of Regulatory Affairs  
CTIA – The Wireless Association

**Detective Sergeant B.A. Finley**

Criminal Investigations Division  
Johns Creek Police Department, Johns Creek, Georgia

**Dan Holdhusen**

Director of Government Relations  
Good Samaritan Society